



# **The Legal Profession Reform Index**

**For**

# **Moldova**

**April 2004**  
**© American Bar Association**

The statements and analysis contained herein are the work of the American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI), which is solely responsible for its content. The Board of Governors of the American Bar Association has neither reviewed nor sanctioned its contents. Accordingly, the views expressed herein should not be construed as representing the policy of the ABA. Furthermore, nothing contained in this report is to be considered rendering legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This publication was made possible through support provided by the U.S. Agency for International Development Moldova Mission, under the terms of the Associate Cooperative Agreement No. 121-A-00-00-00821-00 and Leader Cooperative Agreement No. ENI-A-00-00-0003-00. The opinions expressed herein are those of the author(s) and do not necessarily reflect the view of the U.S. Agency for International Development.

ISBN: 1-590-31-442-5

Printed in the United States of America

Copyright © 2004 by the  
American Bar Association and Central European and Eurasian Law Initiative  
740 15th Street, NW, Washington, DC 20005

## TABLE OF CONTENTS

<b>INTRODUCTION .....</b>	<b>1</b>
<b>MOLDOVA BACKGROUND .....</b>	<b>1</b>
<b>SUMMARY FINDINGS .....</b>	<b>5</b>
<b>TABLE OF FACTOR CORRELATIONS .....</b>	<b>7</b>
<b>LPRI ANALYSIS</b>	
<b>I. PROFESSIONAL FREEDOMS AND GUARANTEES .....</b>	<b>8</b>
1. Ability to Practice Law .....	8
2. Professional Immunity .....	9
3. Access to Clients .....	10
4. Lawyer-Client Confidentiality .....	11
5. Equality of Arms .....	12
6. Right of Audience .....	23
<b>II. EDUCATION, TRAINING, AND ADMISSION TO THE PROFESSION .....</b>	<b>14</b>
7. Academic Requirements .....	14
8. Preparation to Practice .....	16
9. Qualification Process .....	17
10. Licensing Body .....	18
11. Non-discriminatory Admission .....	19
<b>III. CONDITIONS AND STANDARDS OF PRACTICE .....</b>	<b>20</b>
12. Formation of Independent Law Practice .....	20
13. Resources and Remuneration .....	21
14. Continuing Legal Education .....	22
15. Minority and Gender Representation .....	24
16. Professional Ethics and Conduct .....	25
17. Disciplinary Proceedings and Sanctions .....	26
<b>IV. LEGAL SERVICES .....</b>	<b>28</b>
18. Availability of Legal Services .....	28
19. Legal Services for the Disadvantaged .....	30
20. Alternative Dispute Resolution .....	32
<b>V. PROFESSIONAL ASSOCIATIONS .....</b>	<b>33</b>
21. Organizational Governance and Independence .....	33
22. Member Services .....	35
23. Public Interest and Awareness Programs .....	37
24. Role in Law Reform .....	37

## INTRODUCTION

The American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI) developed the Legal Profession Reform Index (LPRI) to assess the process of reform among lawyers in emerging democracies. The LPRI is based on a series of 24 factors derived from internationally recognized standards for the profession of lawyer identified by organizations such as the United Nations and the Council of Europe. The LPRI factors provide aspirational benchmarks in such critical areas as professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations. The LPRI is primarily meant to enable ABA/CEELI or other legal assistance implementers, legal assistance funders, and the emerging democracies themselves to implement better legal reform programs and to monitor progress towards establishing more ethical, effective, and independent profession of lawyers. In addition, the LPRI, together with ABA/CEELI's companion Judicial Reform Index (JRI), will also provide information on such timely issues as corruption, the capacity of the legal system to resolve conflicts, minority rights, and legal education reform.

The LPRI assessment does *not* provide narrative commentary on the overall status of the legal profession in a country, as do the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. Rather, the assessment identifies specific conditions, legal provisions, and mechanisms that are present in a country's legal system and assesses how well these correlate to specific reform criteria at the time of the assessment. In addition, it should be noted that this analytic process is not a statistical survey. The LPRI is based on an examination of key legal norms, discussions with informal focus groups, interviews with key informants, and on relevant available data. It is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system at a particular moment in time through the prism of the profession of lawyers.

### Scope of Assessment

Assessing a country's progress on the reform of the legal profession faces two main challenges. The first is defining the terms legal professional and lawyer. The title Legal Profession Reform Index is somewhat of a misnomer. The LPRI focuses its attention on lawyers; however, most of the world's legal professions are segmented into various categories. For example, the Council of Europe lists several distinct categories of legal professionals, including judges, prosecutors, lawyers, notaries, court clerks, and bailiffs. ABA/CEELI could have included all of these professions, and perhaps others, in its assessment inquiry; however, the resulting assessment would likely become overly complex or shallow. In order to maintain the LPRI's global applicability and portability, ABA/CEELI decided instead to focus on professions that constitute the core of legal systems; i.e., professions that are central to the functioning of democratic and market economic systems. As such, ABA/CEELI eliminated such professions as notaries, bailiffs, and court clerks because of variations and limitations in their roles from country to country. In addition, ABA/CEELI decided to eliminate judges and prosecutors from the scope of the LPRI assessment because it wanted this technical tool to focus on the main mechanism by which citizens can defend their interests vis-à-vis state. Judges and prosecutors constitute arms of government. In addition, ABA/CEELI has also developed the JRI, which focuses on the process of reforming the judiciaries in emerging democracies. At some point, ABA/CEELI may also consider developing an analogous assessment tool for prosecutors in order to complete the assessment triad.

Once ABA/CEELI determined which category of legal professionals would be addressed by the LPRI, the remaining issue was to define the term lawyer. In the United States and several other countries, lawyers constitute a unified category of professionals. However, in most other countries, lawyers are further segmented into several groups defined by their right of audience before courts. For example, in France, there are three main categories of advocate lawyers:

*avocats*, *avoués à la Cour*, and *advocats aux conseils*. An *avocat* is a lawyer with full rights of audience in all courts, who can advise and represent clients in all courts, is directly instructed by his or her clients, and usually pleads in court on their behalf. An *avoué à la Cour* has the monopoly right to file pleadings before the Court of Appeal except in criminal and employment law cases, which are shared with *avocats*. In most cases, the *avoué à la Cour* only files pleadings but does not plead before the court. S/he has no rights of any sort in any other court. The *advocat aux conseils* represents clients in written and oral form before the Court of Cassation and the *Conseil d'Etat* (the highest administrative court of France). In addition to rights of audience, large numbers of government lawyers and the practice in some countries of allowing persons without legal training to practice of law further complicated efforts to define the term “lawyer.”

These issues posed a dilemma in that if ABA/CEELI focused exclusively on advocates (generally understood as those professionals with the right of audience in criminal law courts), it could potentially get an accurate assessment of perhaps a small but common segment of the global legal profession, but leave the majority of independent lawyers outside the scope of the assessment, thus leaving the reader with a skewed impression of reform of the legal profession. For example, according to the CCBE, there were 22,048 lawyers currently practicing law in Poland in 2002. Of that number only 5,315 were advocates. If the LPRI included all persons who are qualified to practice law, that might also produce an inaccurate picture in that it would include non-lawyers and lawyers who are not practicing law. In order to keep its assessment relatively comprehensive yet simple, ABA/CEELI decided to include in the universe of LPRI lawyers those advocates and civil practice attorneys that possess a law degree from a recognized law school and that practice law on a regular and independent basis, i.e., excluding government lawyers. In addition, because some of the factors only apply to advocates, ABA/CEELI decided to expand and contract the universe of lawyers depending on the factor in question.

### **ABA/CEELI's Methodology**

The second main challenge faced in assessing the profession of lawyers is related to substance and means. Although ABA/CEELI was able to borrow heavily from the JRI in terms of structure and process, there is a scarcity of research on legal reform. The limited research on legal reform that exists tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, “[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary.” Carothers, *Promoting the Rule of Law Abroad: the Knowledge Problem*, CEIP Rule of Law Series, No. 34, (Jan. 2003). Moreover, as with the JRI, ABA/CEELI concluded that many factors related to the assessment of the lawyer’s profession are difficult to quantify and that “[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism.” ABA/CEELI, *Judicial Reform Index: Manual for JRI Assessors* (2001).

ABA/CEELI compensated for the lack of research by relying on fundamental international standards, such as the United Nations Basic Principles on the Role of Lawyers and the Council of Europe’s Recommendations on the Freedom of Exercise of the Profession of Lawyer and on ABA/CEELI’s more than 10 years of technical development experience in order to create the LPRI assessment criteria. Drawing on these two sources, ABA/CEELI compiled a series of 24 aspirational statements that indicate the development of ethical, effective, and independent profession of lawyers. To assist in evaluating these factors, ABA/CEELI developed a manual that provides explanations of the factors and the international standards in which they are rooted, that clarifies terminology, that provides flexible guidance on areas of inquiry, and that serves as a template for storing all analysis. Particular emphasis was put on avoiding higher regard to American, as opposed to European concepts, of structure and function of the profession of lawyers. Thus, certain factors are included that an American or European lawyer may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading legal traditions have to offer. The main categories incorporated address professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations.

In creating the LPRI, ABA/CEELI was able to build on its experience in creating the JRI and the newer CEDAW Assessment Tool<sup>1</sup> in a number of ways. For example, the LPRI borrowed the JRI's factor "scoring" mechanism and thus was able to avoid the difficult and controversial internal debate that occurred with the creation of the JRI. In short, the JRI, and now the LPRI, employ factor-specific qualitative evaluations; however, both assessment tools forego any attempt to provide an overall scoring of a country's reform progress since attempts at overall scoring would be counterproductive.<sup>2</sup> Each LPRI factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of that statement to that country's regulations and practices pertaining to its legal profession. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it will be given a "neutral."

The results of the 24 separate evaluations are collected in a standardized format in each LPRI country assessment. As with the JRI, there is the assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast performance of different countries in specific areas and—as LPRI's are updated—within a given country over time. There are two main reasons for borrowing the JRI's assessment process, "scoring," and format. The first is simplicity. Building on the tested methodology of the JRI enabled a speedier development of the LPRI. The second is uniformity. Creating uniform formats will enable ABA/CEELI eventually to cross-reference information generated by the LPRI into the existing body of JRI information. This will eventually give ABA/CEELI the ability to a much more complete picture of legal reform in target countries.

Two areas of innovation that build on the JRI experience are the creation of a Correlation Committee and the use of informal focus groups. In order to provide greater consistency in correlating factors, ABA/CEELI will form a committee that will include the assessor and select ABA/CEELI DC staff. The concept behind the committee is eventually to add a comparative perspective to the assessor's country-specific experience and to provide a mechanism for consistent scoring across country assessments. The use of informal focus groups that consist of not only lawyers, but also judges, prosecutors, NGO representatives, and other government officials are meant to help issue spot and to increase the overall accuracy of the assessment.

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, journalists, and outside observers with detailed knowledge of the legal system. Overall, the LPRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

The LPRI was designed to fulfill several functions. First, ABA/CEELI and other rule-of-law assistance providers will be able to use the LPRI's results to design more effective programs related to improving the quality of independent legal representation. Second, the LPRI will also provide donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the legal profession in countries where the

---

<sup>1</sup> CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. CEELI developed the CEDAW Tool in 2001-2002.

<sup>2</sup> For more in-depth discussion on this matter, see Larkins, "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis," 44 Am. J. Comp. L. 605, 611 (1996).

LPRI is implemented. Third, combined with the CEELI's Judicial Reform Index (JRI), the LPRI will contribute to a comprehensive understanding of how the rule of law functions in practice. Fourth, LPRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of lawyers in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the legal profession.

## **Acknowledgements**

ABA/CEELI would like to thank the team that developed the concept and design of the LPRI, including the project coordinators Claude Zullo, Associate Country Director of ABA/CEELI's Caucasus Programs, and Andrew Solomon, Associate Director of ABA/CEELI's Legislative Assistance and Research Program, as well as Cristina Turturica, ABA/CEELI Fellow, and Gavin Weise, ABA/CEELI Program Associate.

During the yearlong development process, input and critical comments were solicited from a variety of experts on legal profession matters. ABA/CEELI would also like to thank its executive leadership: David Tolbert, former Executive Director (2001-2003) and Michael Maya, Deputy Director and NIS Regional Director; Mary Greer, Director of ABA/CEELI's Criminal Law Program and Coordinator of Legal Profession Reform Focal Area; and Scott Carlson, former CEE Regional Director and Coordinator of Judicial Reform Focal Area for reviewing the initial versions of the LPRI's Factors and structure. Additionally, ABA/CEELI would like to thank the members of its LPRI Expert Group, who helped to revise the initial LPRI structure and factors, including Kathleen Clark, Kathryn Hendley, Stéphane Leyenberger, William Meyer, Avrom Sherr, Christina Storm, Roy Stuckey, Rupert Wolff, and, in particular, Mark Dietrich, who later implemented the pilot LPRI phase. Finally, ABA/CEELI would also like to thank its resident staff attorneys who participated in the development process, including Marin Chicu (Moldova), Tatiana Chernobil (Kazakhstan), Gulara Gulieva (Azerbaijan), Jetish Jeshari (Kosovo), Azamat Kerimbaev (Kyrgyzstan), and Eduard Mrktchyan (Armenia).

## **Assessment Team**

The Moldova LPRI 2004 Analysis assessment team was led by Thomas F. Cope, and benefited in substantial part from Cristina Turturica (Malai), as well as Marin Chicu and Samantha Healy. ABA/CEELI Washington staff members Andrew Solomon, Julie Broome, and Gavin Weise served as reviewers and editors. The conclusions and analysis are based on interviews conducted in Moldova during April 2004 and documents reviewed during that period. Records of relevant authorities and individuals interviewed are on file with ABA/CEELI.

## **MOLDOVA BACKGROUND**

### **Legal Context**

The Republic of Moldova is an independent state with a republican form of government, consisting of Parliament, a president, the government (executive), the judiciary, and a Constitutional Court. For administrative purposes, Moldova is divided into thirty-two districts called *raions*, in addition to the municipalities of Chisinau and Balti and the Gagauz Autonomous Territorial Unit.<sup>3</sup> These local governmental units are collectively referred to as territorial-administrative units. Although the Constitution declares that Moldova is a unitary state, the government does not in fact control the territory of Transnistria, which is located between the Nistru River and Moldova's eastern border with Ukraine. Transnistria, a self-proclaimed independent republic since 2 September 1990, has its own legal system, judiciary, and legal profession to which Moldovan law does not apply. The Moldovan government and Transnistrian authorities have begun negotiations on a proposal to resolve Transnistria's status through establishment of a federal state. Because of Transnistria's separate and distinct legal profession, this assessment focuses on Moldova and does not attempt to cover the legal profession in Transnistria comprehensively.

Legislative authority in Moldova lies with Parliament, which consists of 101 deputies elected for four-year terms. Parliament's responsibilities include passing laws, providing legislative interpretations, ratifying or renouncing international treaties, passing bills of amnesty, proposing new legislation, approving the national budget, and calling referenda. Through a confidence vote, Parliament also approves the members of the government and its proposed program, as presented by the president's nominee for prime minister. Parliament can also dismiss the prime minister and government by a simple majority vote of no confidence.

The president of Moldova serves as head of state and exercises executive power in conjunction with the government. Parliament elects the president for a four-year term by secret ballot. The president represents the state in international relations and is commander-in-chief of the armed forces. He appoints the prime minister, who must pass a confidence vote in Parliament before taking office. If two appointees fail a confidence vote, the president may dissolve Parliament and call for early elections. The president may also dissolve Parliament when a legislative deadlock continues for three consecutive months. Laws passed by Parliament are submitted to the president for promulgation. The president can send legislation back to the Parliament for reconsideration, but cannot veto it if Parliament adopts it a second time.

The government consists of a prime minister, vice prime ministers, ministers, and other members. It is responsible for proposing and implementing the domestic and foreign policy of the state and for exercising control over public administration.

The judicial branch is composed of the three levels of courts, district courts, courts of appeal, and the Supreme Court of Justice, in addition to specialized economic and military courts.

The Constitutional Court, which is not part of the judiciary, rules only on constitutional issues.

### **History of the Legal Profession**

During the Soviet era, advocates in Moldova were required to be members of the Collegium of Advocates and were regulated by a law based on the 1979 USSR Statute of the Advokatura. LAW OF THE MOLDAVIAN SOVIET SOCIALIST REPUBLIC ON THE APPROVAL OF THE REGULATION OF THE LEGAL PROFESSION OF THE R.S.S.M., Law No. 526-X of 21.11.1980, R.S.S.M. Government News 11/111 (1980). After Moldova's independence in 1991, the Collegium of Advocates continued as a

---

<sup>3</sup> Between 1999 and 2003, Moldova was divided into 11 *judete* for purposes of local administration.



voluntary association of advocates, which granted admission to the profession following completion of an internship and passing a qualification examination. In addition to members of the Collegium of Advocates, lawyers who passed a written examination and received a license from the Ministry of Justice to provide legal assistance could also serve as criminal defense attorneys.

In 1999, Parliament passed a new law on advocates, replacing the Soviet era legislation. LAW OF THE REPUBLIC OF MOLDOVA ON THE LEGAL PROFESSION, Law No. 395-XIV of 13.05.1999, M.O. 98-100/485 (1999). Among other things, it converted the voluntary Collegium of Advocates into the Union of Advocates, an organization to which all advocates were required to belong. *Id.* art. 2(2). Lawyers with licenses issued by the Ministry of Justice to provide legal assistance could continue to work as criminal defense attorneys only by joining the Union of Advocates.<sup>4</sup> *Id.* art. 44(4). Although the Ministry of Justice issued licenses for advocates, it was the Union of Advocates that determined who was qualified to be licensed.<sup>5</sup> *Id.* art. 5(2). These and other provisions of the law were challenged in the Constitutional Court, which held them unconstitutional because they infringed on the right of citizens to be defended by a lawyer of their choice, the rights of freedom of association and free choice of profession on the part of lawyers, and the constitutional competence of the Ministry of Justice in licensing advocates. DECISION OF THE CONSTITUTIONAL COURT No. 8 of 15.02.2000, M.O. 24-26/11 (2000).

More than two years after the Constitutional Court's decision, Parliament passed another law on advocates. LAW OF THE REPUBLIC OF MOLDOVA ON THE LEGAL PROFESSION, Law No. 1260-XV of 19.07.2002, M.O. 126-127/1001 (2002), *as amended by* Law No. 206-XV of 29.05.2003, M.O. 149-152/598 (2003) [hereinafter LAW ON THE LEGAL PROFESSION].<sup>6</sup> Although this law also established an organization to which all advocates were required to belong, Parliament adopted a more subtle approach to achieve this result. After providing that advocates have the right to associate freely in professional associations, the law states, "Lawyers form the Bar [*Baroul*] under the terms of this law." *Id.* arts. 30, 31(1). This time decisions on issuance and withdrawal of licenses were entrusted to the Ministry of Justice's Commission for Licensing Advocates, rather than to the Bar. *Id.* arts. 17(2), 22(2). The Bar is governed by a Congress, an annual meeting of all advocates that elects members to the Bar's other administrative bodies (the Council, Commission for Ethics and Discipline, and Audit Commission), as well as a majority of the members of the Commission for Licensing Advocates. *Id.* arts. 31(3), 32(2)(a), 18(1). The constitutionality of the Law on the Legal Profession was challenged on many of the same grounds as the 1999 law had been, but this time the Constitutional Court held it constitutional. DECISION OF THE CONSTITUTIONAL COURT No. 12 of 19.06.2003, M.O. 138-140/13 (2003).

To facilitate the transition from the Union of Advocates to the Bar, a commission of advocates chaired by a deputy minister of justice was established to prepare for the first Congress of the Bar. LAW ON THE LEGAL PROFESSION art. 59(4). The deputy minister chaired the Congress until election of a president. *Id.* art. 59(5). At the first Congress, in December 2002, members of the Bar Council and commissions were elected, as well as the president and two deputy presidents of

---

<sup>4</sup> According to a report presented to the first Congress of Advocates on 17 December 1999, there were then a total of 828 advocates, of whom 702 had been members of the Collegium of Advocates and 126 had been licensed by the Ministry of Justice to provide legal assistance and who applied to join the Union of Advocates. AVOCATUL POPORULUI, No. 1-3, at 4 (2000).

<sup>5</sup> In addition to having a law degree and a good reputation, and speaking the state language (Moldovan), candidates were required to serve a one to two year internship if they had less than three years of professional experience and pass a qualification examination administered by the Union of Advocates. *Id.* art. 6 (1), (2), (4). However, judges and prosecutors with at least five years of professional experience could become advocates without taking the qualification examination., *Id.* art. 6(3).

<sup>6</sup> A more accurate translation of the name of this law, *Legea Republicii Moldova cu privire la avocatura*, would be the Law of the Republic of Moldova on Avocatura. However, because it is widely referred to in English as the Law on the Legal Profession, that name is used here even though it could suggest that the law regulates legal professionals in addition to advocates.

the Bar Council. *The Congress of Advocates Finished its Work on 27 December 2002*, AVOCATUL POPORULUI, No. 1, at 1-4 (2003). A code of ethics was also adopted. *Id.* at 1.

During 2003, the Congress of Advocates voted twice to strike. On 7 May 2003, an extraordinary Congress of the Bar adopted a decision calling on Parliament, the government, and the president to amend the Law on the 2003 State Social Insurance Budget, which required all advocates to make fixed state social insurance contributions of MDL 711.66 (about \$65) each month,<sup>7</sup> and to pay the arrears owed to ex officio advocates for representing indigent criminal defendants. On 19 May they struck and refused to attend proceedings in court, causing delays in scheduled hearings. In response, the president of Moldova approved a law the same day, reducing advocates' state social insurance payments. The following day, the Bar Council decided to suspend the strike. However, because the amendment to the Law on the 2003 State Social Insurance Budget was not retroactive to 1 January, but was effective only as of 23 May 2003, social insurance contributions for the period before 23 May amounted to MDL 3,351.80 (about \$305), more than many advocates could afford to pay. That and other grievances led to a second extraordinary Congress, on 31 October 2003. It adopted a decision calling on Parliament, the government, and the president to meet the advocates' demands in full. These demands related to social insurance contributions between 1 January and 23 May 2003, the conditions under which advocates met with clients in detention, and rents for advocates' offices. The second strike began on 17 November and lasted for a week. Most of the bar's demands were met. See Factor 22.

## **The Universe of Legal Professionals**

Although advocates and to a lesser extent civil practice attorneys are the focus of this report, a wide range of legal professionals is found in Moldova, including Transnistria. Many but not all are graduates of a university law faculty. Such graduates are commonly referred to as jurists, unless a more specific term applies. The boundaries between different kinds of jurists can sometimes be ambiguous.

The universe of legal professionals includes judges and prosecutors. Both are required to have a university degree from the law faculty and both are employed by the state. Other legal professionals who are employed by the state are court clerks, who receive and file pleadings and maintain court records; judicial executors (sometimes known as bailiffs), who enforce court judgments; and investigators, who assist prosecutors in investigating crimes and preparing criminal cases for trial.

Notaries are also included in the universe of legal professionals. They draft and authenticate documents, particularly contracts and other documents relating to the transfer and inheritance of property. They are licensed by the Ministry of Justice, and the state regulates both their qualifications (which include a university degree from the law faculty and completion of an apprenticeship with an experienced notary) and the number of notaries.

Of the large number of law graduates—about 3,000 each year—only a few become advocates. As of December 2003, there were 1,027 practicing advocates in Moldova, which has an estimated population (excluding Transnistria and the municipality of Bender) of 3.6 million. There are about 80 advocates in Transnistria, which has a population of approximately 600,000. Advocates are independent professionals who provide legal services to the public. Advocates have a monopoly on the representation of defendants in criminal trials.<sup>8</sup> They also often provide legal advice and representation in civil trials. The relationship of advocate and client is created by

---

<sup>7</sup> Moldovan lei (MDL) are converted to U.S. dollars at a rate of exchange of MDL 11 = \$1.00, the approximate rate of exchange when the interviews for this assessment were conducted.

<sup>8</sup> It should be noted that article 67(2)(2) of the Criminal Procedure Code states that "other persons authorized by law to act as a defense lawyer" may also represent criminal defendants, but it is unclear what persons other than advocates Parliament may have had in mind.

contract, and the advocate's authority to represent the client is evidenced by a mandate, a document issued by the advocate's office. LAW ON THE LEGAL PROFESSION art. 52(1)-(2). The advocate's fee is called an honorarium. Advocates are prohibited from serving in paid positions; that is, they cannot be employees, except in academic or teaching posts or as arbitrators. To become an advocate, a graduate of a university law faculty must serve an internship of up to one year under the supervision of an advocate with not less than five years experience and then pass a qualification examination administered by the Commission for Licensing Advocates, which functions under the Ministry of Justice. Successful candidates are issued a license by the Ministry of Justice and become members of the Bar. The profession of advocate is governed by the Law on the Legal Profession and the Bar's Code of Ethics. In Transnistria, advocates are not licensed, but owe their status to membership in the Bar Association. To become a member, a candidate must complete a six-month internship and then pass a qualification examination administered by the Transnistrian Bar Association.

Some jurists, referred to in this assessment as civil practice attorneys, provide legal advice and representation in civil trials to members of the public on a regular and independent basis. Unlike an advocate, a civil practice attorney's relationship with a client is established by a proxy (*procura*), a power of attorney by which the attorney is authorized to act on behalf of the client.<sup>9</sup> Other jurists, known as jurisconsults, are employed by the government or commercial enterprises and do not provide legal services to the public. Some jurisconsults are former advocates who, because of the prohibition against employment, must request to have their license suspended while serving in that capacity. Civil practice attorneys and jurisconsults are neither licensed nor regulated by the state or any professional organization. They are not subject to any binding code of ethics. The largely unregulated practice of these jurists makes it difficult to say much about them with assurance. Indeed, even the number of practicing jurists is unknown. The Union of Jurists (a voluntary professional association of judges, prosecutors, advocates, notaries, government officials, law professors, and students) attempted to determine the total number of law graduates and the number of law graduates who work as jurists, but was unable to do so.

Other legal professionals are scholars and teachers who work in academic research centers and university law faculties. Many have a doctorate in law, and some also practice as advocates.

---

<sup>9</sup> In civil trials, parties may even be represented by persons without a law degree. See CIVIL PROCEDURE CODE OF THE REPUBLIC OF MOLDOVA art. 75(1), Law No. 122-XV of 14.03.2003, M.O. 111-115/1204 (2003) [hereinafter CIV. PRO. CODE]. Such a representative is appointed by proxy. *Id.* art. 80(1).

## SUMMARY FINDINGS

For four years, considerable uncertainty surrounded the status of advocates in Moldova. In 1999, Parliament passed a law to replace the almost two decade old Soviet era law. Following a challenge in the Constitutional Court, important provisions of the new law were held unconstitutional. Parliament then passed a second law in 2002, which was also challenged in the Constitutional Court. In June 2003, the court held that the second Law on the Legal Profession was constitutional, thereby confirming that it would govern advocates and their work. The first Congress under this law had been convened in December 2002 to elect officers and members to the Bar's governing bodies and to adopt a code of ethics. It is too soon to know the long-term impact of this law, but it is apparent that advocates now have a Bar that is self-governing, independent, and generally democratic. The extent to which the Bar will provide services for its members remains to be seen. Thus far, it has been hampered by limited financial resources and has done little. Similarly, the organized Bar's contributions to law reform, public awareness programs, and providing legal services to the underprivileged in non-criminal matters have been minimal. Nevertheless, advocates now have a professional organization that can be used as a vehicle to satisfy these needs.

Existing requirements for entry into the profession need to be improved to ensure that advocates provide competent legal services on a consistent basis. In the past decade, too many law faculties were established, motivated more by a desire to meet the demand for law degrees (and the tuition that can be charged for providing them) than a commitment to train legal professionals. Most law faculties lack sufficient numbers of qualified instructors and even the best emphasize theoretical knowledge with little attention to teaching analytical and practical skills. Corruption, either direct or indirect, is rife, and academic standards are low. Despite the uneven quality of legal education, law graduates who want to become advocates are not required to pass any entrance examination before serving an internship or to take any additional coursework before taking the qualification examination. The experience gained by interns varies widely depending upon their supervising advocates and may not necessarily include experience observing the representation of criminal defendants—the one activity that only advocates are allowed to perform. Furthermore, the qualification exam is oral and susceptible to subjective judgments. It is uncertain whether the low pass rate is due to the rigorous nature of the examination and the poor preparation of candidates, or to less worthy considerations. Greater objectivity and transparency is needed to remove suspicions about the process of becoming an advocate.

Continuing legal education (CLE) is vital to allow advocates to overcome gaps in their knowledge and skills as a result of inadequate legal education and internships, not to mention the significant volume of new legislation passed every year. Unfortunately, there are too few opportunities for CLE, and most advocates, particularly those outside Chisinau, never or only rarely attend CLE seminars. In 2004 the Bar adopted a requirement for mandatory CLE, but it is not at all certain that it can be successfully implemented or that the capacity to provide the necessary CLE can readily be created.

The Bar has adopted an enforceable code of ethics. While it could be improved, the code contains basic rules of professional responsibility. Unfortunately, little if any training has been offered on the code's requirements, and its impact appears to be limited. A process exists for the investigation of complaints of misconduct by advocates, but the Bar's Commission for Ethics and Discipline is hamstrung by inadequate resources and the inability to do more than issue warnings and reprimands—or recommend that another body, the Commission for Licensing Advocates (under the Ministry of Justice), consider withdrawing an advocate's license. Furthermore, the existence of informal procedures for addressing complaints undermines the transparency of the process.

The challenges faced by advocates are formidable, but at least they have the Bar and can begin to address these issues. However, advocates are only a part of the legal profession. Civil practice attorneys, jurists, and other jurists provide consultations and legal representation in civil

matters. They are not subject to any licensing or entrance requirement (although many of them, it appears, do have a law degree), binding code of ethics, or other professional standards. Nor are they subject to discipline for professional misconduct. In short, the public has no assurance that lawyers other than advocates are competent or professional, and no recourse if it turns out that they are incompetent or unprofessional.

## TABLE OF FACTOR CORRELATIONS

The Moldova 2004 analysis reveals a developing legal system faced with difficult economic conditions and structural limitations. While these correlations may serve to give a sense of the relative status of certain issues present, ABA/CEELI would underscore that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis. ABA/CEELI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed evaluations in future LPRI assessments. ABA/CEELI views the LPRI Assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

<b>I. Professional Freedoms and Guarantees</b>		
<b>Factor 1</b>	<b>Ability to Practice Law Freely</b>	<b>Neutral</b>
<b>Factor 2</b>	<b>Professional Immunity</b>	<b>Neutral</b>
<b>Factor 3</b>	<b>Access to Clients</b>	<b>Negative</b>
<b>Factor 4</b>	<b>Lawyer-Client Confidentiality</b>	<b>Neutral</b>
<b>Factor 5</b>	<b>Equality of Arms</b>	<b>Neutral</b>
<b>Factor 6</b>	<b>Right of Audience</b>	<b>Positive</b>
<b>II. Education, Training, and Admission to the Profession</b>		
<b>Factor 7</b>	<b>Academic Requirements</b>	<b>Neutral</b>
<b>Factor 8</b>	<b>Preparation to Practice Law</b>	<b>Negative</b>
<b>Factor 9</b>	<b>Qualification Process</b>	<b>Neutral</b>
<b>Factor 10</b>	<b>Licensing Body</b>	<b>Negative</b>
<b>Factor 11</b>	<b>Non-discriminatory Admission</b>	<b>Neutral</b>
<b>III. Conditions and Standards of Practice</b>		
<b>Factor 12</b>	<b>Formation of Independent Law Practice</b>	<b>Positive</b>
<b>Factor 13</b>	<b>Resources and Remuneration</b>	<b>Negative</b>
<b>Factor 14</b>	<b>Continuing Legal Education</b>	<b>Negative</b>
<b>Factor 15</b>	<b>Minority and Gender Representation</b>	<b>Negative</b>
<b>Factor 16</b>	<b>Professional Ethics and Conduct</b>	<b>Neutral</b>
<b>Factor 17</b>	<b>Disciplinary Proceedings and Sanctions</b>	<b>Negative</b>
<b>IV. Legal Services</b>		
<b>Factor 18</b>	<b>Availability of Legal Services</b>	<b>Negative</b>
<b>Factor 19</b>	<b>Legal Services for the Disadvantaged</b>	<b>Neutral</b>
<b>Factor 20</b>	<b>Alternative Dispute Resolution</b>	<b>Neutral</b>
<b>V. Professional Associations</b>		
<b>Factor 21</b>	<b>Organizational Governance and Independence</b>	<b>Neutral</b>
<b>Factor 22</b>	<b>Member Services</b>	<b>Neutral</b>
<b>Factor 23</b>	<b>Public Interest and Awareness Programs</b>	<b>Negative</b>
<b>Factor 24</b>	<b>Role in Law Reform</b>	<b>Negative</b>

## I. Professional Freedoms and Guarantees

### Factor 1: Ability to Practice Law Freely

*Lawyers are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.*

<b>Conclusion</b>	<b>Correlation: Neutral</b>
Advocates are guaranteed the right to practice without interference or intimidation, but in practice these rights are sometimes disregarded.	

#### Analysis/Background:

By law, advocates are independent:

While practicing law, an advocate is independent and follows only the law. An advocate shall be free to take positions and shall have no obligation to coordinate the position with anyone except the client.

LAW ON THE LEGAL PROFESSION art. 43. Specific guarantees of independence include the following:

- any interference with the professional activities of advocates is prohibited;
- approval of the prosecutor general, a deputy prosecutor general, or a court is required before an advocate's home, office, or vehicle can be searched, his or her correspondence seized, or his or her telephone or other conversations intercepted;
- an advocate cannot be searched or detained while performing professional duties, except for flagrant offenses;
- within six hours after a lawyer was detained or held criminally liable, the Ministry of Justice and the Bar Council must be informed;
- insulting, slandering, threatening, or using violence against an advocate in connection with his or her professional duties shall be punished under law;
- an advocate may not be interrogated regarding a client; and
- public authorities may not influence or control the contract between an advocate and client, directly or indirectly.

*Id.* art. 44. In addition, any interference with defense of the interests of another "within legally established confines shall be punished by authority of law." CONSTITUTION OF THE REPUBLIC OF MOLDOVA, art. 26(4), M.O. 1 (1994), *last amended by* Law No. 1471-XV of 21.11.2002, M.O. 109/1054-1294 (2002) [hereinafter CONST.]. No implementing legislation specifying the punishment for such interference appears to have been enacted yet.

Despite these guarantees of independence, interference with or intimidation of advocates sometimes occurs, more commonly in the *raions* than in Chisinau. Among the forms identified by interviewees are threats by investigating officials that a client will suffer because of an advocate's zealous representation, threats of violence by relatives of the victim, and harassment of the advocate by government inspections or investigations. Sometimes interference or intimidation takes more subtle forms, such as a polite request from a judge or prosecutor. Several interviewees said that judges are more commonly subject to influence than advocates, and they in turn seek to influence advocates' representation of their clients. However, a number of interviewees said that an advocate's reputation may have much to do with whether he or she is

subject to interference or intimidation. Advocates with a reputation for independence seldom encounter attempts to interfere with or intimidate them.

Interviewees did not report any instance when official sanctions were used to punish lawyers for their independence in representing clients. However, in 2000 the Constitutional Court fined the president of the Union of Advocates for criticizing the court's decision holding portions of the 1999 law on the legal profession unconstitutional. In a report in the February 2000 issue of *Economicheskoe Obozrenie*, he was quoted as saying that the court's decision would result in "complete anarchy in the profession of advocate." He also suggested that the judges of the Constitutional Court did not consider the European Court of Human Rights (ECHR) as authoritative and posed the question whether "the Constitutional Court is constitutional." Pursuant to article 82(1)(e) of the Code of Constitutional Procedure, the court fined him MDL 360 (about \$33) for lack of respect toward the court and its decision. However, in 2004 the ECHR held that the Constitutional Court had violated article 10 of the European Convention on Human Rights when it fined the president of the Union of Advocates. *Amihalachioaie v. Moldova*, No. 60115/00, 20 Apr. 2004.

## Factor 2: Professional Immunity

***Lawyers are not identified with their clients or the clients' causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
Advocates are generally not identified with their clients or their clients' causes, but the likelihood of such identification increases when the client is prominent politically. Advocates are not subject to liability for statements made while representing their clients.	

### Analysis/Background:

Neither the Law on the Legal Profession nor the Code of Ethics directly provides that advocates should not be identified with their clients or that they are immune from statements made in good faith on behalf of their clients. However, in criminal trials, "[t]he defense counsel may not be identified by state bodies or officials with the person whose interests are defended by him or with the character of the criminal case that is investigated with his participation." CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF MOLDOVA, Law No. 122-XV of 14.03.2003, art. 67(1), M.O.104-110/447 (2003) [hereinafter CRIM. PRO. CODE]. Furthermore, advocates are accorded some degree of protection against the hostile reactions that the representation of unpopular clients may provoke. Insulting, slandering, or threatening an advocate or using violence against him or her in connection with professional duties "shall be punished by law." LAW ON THE LEGAL PROFESSION art. 44(5); see also CRIMINAL CODE art. 154(2)(d), M.O. 128-129/1012 (2002) [hereinafter CRIM. CODE], as amended by Law No. 211-XV of 29.05.2003, M.O. 116-120/470 (2003) (violent act against a person in connection with performance of official or public duty is punishable by fine of 500-1000 conventional units or imprisonment for up to one year).<sup>10</sup>

Although many interviewees said that advocates were not identified with unpopular clients, a few reported that they have been. According to one, courts sometimes identify advocates with their clients in criminal cases. Another interviewee observed that an advocate who represents a political figure is more likely to be identified in the public mind, and sometimes by the court, with the client. Another reported that the public identified him with an opposition party, even though he is not a member of that party. The consequences of such identification do not appear to be

<sup>10</sup> A conventional unit equals MDL 20 (about \$1.81).



serious and do not, for example, result in fines, reprimands, suspension of license, or threats against advocates. Furthermore, several interviewees confirmed that advocates are not subjected to liability for statements made while defending their clients.

### Factor 3: Access to Clients

***Lawyers have access to clients, especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
Although the Constitution and laws guarantee free access by advocates to their clients, these provisions have often not been respected in practice.	

#### Analysis/Background:

Preventative detention for up to seventy-two hours is allowed before an arrest warrant is issued. CONST. art. 25(3); CRIM. PRO. CODE art. 11(4). Anyone in preventative detention or who has been arrested must be advised “without delay” of the reason for detention or arrest and the charges against him or her, “which may take place only in the presence of an advocate, either chosen by the defendant or appointed ex officio.” CONST. art. 25(5). See Factor 19 on ex officio appointment of defense counsel. In addition, advocates are guaranteed access to their clients. In order to provide legal assistance to clients who have been detained, arrested, or convicted, advocates are “assured of necessary conditions for meeting and consulting with the client, with full respect of confidentiality, without limiting their duration or number, at any stage of a criminal or administrative case.” LAW ON THE LEGAL PROFESSION art. 45(3); *see also* CRIM PRO. CODE art. 64(2)(4). Furthermore, officials responsible for custody of those detained, arrested, or convicted must allow an advocate free access to such persons. LAW ON THE LEGAL PROFESSION art. 45(4). Failure to comply with either of these provisions “shall be considered a violation of the [constitutional] right to defense and entail liability under law.” *Id.* art. 45(5); *see also* CRIM. PRO. CODE art. 94(1)(1) (evidence obtained through violation of a person’s rights is inadmissible).

However, interviewees overwhelmingly reported that these legal guarantees have frequently not been respected in practice.<sup>11</sup> According to one advocate, the laws are good, but the reality is “a disaster.” Persons are sometimes held in preventative detention for more than seventy-two hours. Because police want to interrogate suspects thoroughly before allowing them to meet with an advocate (after which they are less forthcoming in their answers), various means are used to prevent them from meeting with their advocates. For example, the police commissar in charge of a detention facility may require advocates to present their mandate and obtain his approval before meeting with the client. Delays can result when the commissar is absent. Sometimes time limits are imposed on meetings between an advocate and client, or law enforcement officials are present during the meeting (but will usually leave when asked to). Insufficient facilities for meetings may also lead to delays when an advocate has to wait his or her turn to meet with a client in detention. Such facilities may be cramped and lack fresh air. In the past, advocates and clients in Chisinau were separated by a glass window and had to speak to each other over telephones, which were widely suspected of having been used by authorities for eavesdropping.

<sup>11</sup> Interviewees’ complaints were directed primarily against preventative isolation facilities, which are under the jurisdiction of the police, not the penitentiaries, which are under the jurisdiction of the Ministry of Justice. In penitentiaries, they said, it is possible for advocates to speak freely with clients. Thus, conditions are reported to be worse for those merely suspected of a crime than for those who have actually been convicted of one.

The importance of ensuring that advocates are allowed access to suspects who are held in detention was highlighted by a survey of 300 judges, prosecutors, and lawyers. In this survey, 78.6% said they believed there was a risk that innocent people are convicted, primarily because of false confessions resulting from unlawful interrogation methods. INSTITUTUL DE REFORME PENALE, CRIMINAL JUSTICE & HUMAN RIGHTS 16-17 (2004) [hereinafter CRIMINAL JUSTICE & HUMAN RIGHTS]. The most common unlawful measure reported is the use of psychological and physical violence. *Id.* at 23

Certain anti-social behavior, often constituting minor offenses, is not punished under the Criminal Code, but under the Administrative Contravention Code. See ADMINISTRATIVE CONTRAVENTION CODE OF THE REPUBLIC OF MOLDOVA, Law of 29.03.85, HERALD OF THE SUPREME SOVIET OF THE S.S.M.R. 3/47 (1985) [hereinafter ADMIN. CONTRAVENTION CODE]. It was reported that people are often arrested for allegedly committing an administrative offense, but in reality to obtain information. The police have authority to detain persons in custody for certain offenses, in some cases only up to three hours and in others until the court examines the case. *Id.* arts. 247- 249. Persons in detention have the right to be assisted by an advocate. *Id.* art. 254. However, police reportedly use administrative detention to pressure detainees, sometimes even using torture, to obtain information or a confession. The inability of advocates to meet freely with clients in detention was one of the grievances that lead to the advocates' strike in November 2003. See Factor 22. Conditions have reportedly improved since then. For example, in Chisinau, advocates and clients now meet face-to-face, without being separated by glass. However, the cages in which criminal defendants are held during trial still present an impediment to consultations between an advocate and client.

#### Factor 4: Lawyer-Client Confidentiality

***The state recognizes and respects the confidentiality of professional communications and consultations between lawyers and their clients.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
The confidentiality of professional communications between advocates and clients is guaranteed by law, but in practice confidentiality has sometimes been violated.	

#### Analysis/Background:

Moldovan law guarantees the confidentiality of communications between advocates and clients. When a client has been detained, arrested, or convicted, the advocate has the right to meet with the client under conditions assuring confidentiality of their communications. LAW ON THE LEGAL PROFESSION art. 45(3); see also CRIM. PRO. CODE arts. 64(2)(4), 66(2)(6). Confidentiality is also protected by prohibiting the interrogation of advocates regarding their clients. LAW ON THE LEGAL PROFESSION art. 44(6). Except in the interest of national security or public order or to prevent the commission of a crime, the state is required to ensure "the privacy of letters, telegrams, other postal dispatches, telephone conversations, and other legal means of communication." CONST. art. 30(1). Approval by the prosecutor general, a deputy prosecutor general, or a court is required for an advocate's home, office, or vehicle to be searched or for his or her correspondence seized or telephone or other conversations to be intercepted. LAW ON THE LEGAL PROFESSION art. 44(2).

Notwithstanding these guarantees, most interviewees reported that the confidentiality of advocate-client communications is not always respected. Police and prosecutors seek to gain an advantage if they can. For example, police are often present when advocates meet with clients in detention, but generally leave when requested to. One interviewee reported that a prosecutor

asked what his client had told him, but a prosecutor with thirty years of experience insisted that he had never heard of such a practice. A number of advocates believed that listening devices had been installed in their offices or that their telephones had been tapped to allow the police to intercept conversations with their clients, allegations that are difficult to substantiate. Before the advocates' strikes in 2003, it was common for advocates meeting with clients in detention to be separated by a glass window, which required them to speak by telephone. Advocates were convinced that the authorities eavesdropped on those conversations, which is also difficult to substantiate. However, in November 2003, the Ministry of Internal Affairs issued regulations to address concerns about advocate-client confidentiality, which are reported to have resulted in greater respect for confidentiality. Minister of Internal Affairs Order No. 30/338 of 10.11.2003, AVOCATUL POPORULUI, Nos. 11-12, at 32 (2003).

## Factor 5: Equality of Arms

***Lawyers have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
Advocates generally have access to information in the case file, but sometimes face difficulties in obtaining other information necessary to represent their clients.	

### Analysis/Background:

Advocates have the right to review all documents in the case file, take notes, and make copies; independently collect and submit information relevant to the case; request information and documents from courts, law enforcement agencies, public authorities, and other organizations; and request expert opinions, with the client's consent. LAW ON THE LEGAL PROFESSION art. 45(1)(b)-(e). These provisions in the Law on the Legal Profession apply to advocates representing clients not only in criminal cases, but also in civil and administrative cases.

Officials who fail to comply with requests for information or documents "shall be held liable under law." *Id.* art. 45(2). The Law on the Legal Profession does not itself specify a deadline for responding to such requests, nor what liability will be imposed. However, the Law on Access to Information, which makes government information available to the public subject to certain restrictions, does. LAW ON ACCESS TO INFORMATION arts. 5(2)(a), 7, 10, Law No. 982-XIV of 11.05.2000, M.O. 88-90/664 (2000). Information or documents must be provided when they are available, but no later than fifteen days after the request, plus an additional five days if authorized by the head of the governmental body. *Id.* art. 16. An official who fails to comply may be fined between 10 and 150 minimum wages (a minimum wage equals MDL 18 or about \$1.64). ADMIN.CONTRAVENTION CODE art. 199/7; *see also* CRIM. CODE art. 180 (deliberate violation of right to information, resulting in "considerable harm," may subject an official to sanctions, including imprisonment for up to three years). However, this may in reality be an ineffective means of obtaining information, because if an official fails to comply, the only recourse is to file a lawsuit, which may not be completed by the time the information is needed.

In addition, the Civil Procedure Code states that "civil trials shall be conducted on the basis of the adversarial principle and equality of parties in their procedural rights." CIV. PRO. CODE art. 26(1); *see also id.* arts. 26(4), 56(1)-(2), 59(5). Parties and other participants—and therefore their representatives—have the right to review the case file and take notes and make copies of the file; request "recusations" (challenges); submit evidence and participate in the examination of evidence; request presentation of additional evidence; examine participants, witnesses, and

experts at hearings; and formulate motions. *Id.* art. 56(1). These rights of representatives under the Civil Procedure Code apply to civil practice attorneys as well as advocates.

Interviewees disagreed about whether advocates have adequate access to information. Some reported few if any difficulties, while others said that an advocate's right to information is not respected in practice. There are generally no restrictions on reviewing case files, and advocates are allowed to take notes and make copies of documents in the file. However, in practice advocates generally do not have the entire file photocopied, due to insufficient photocopying facilities, and at trial only the prosecutor and judge have copies of the complete case file. Interviewees reported that obtaining copies of documents not included in the case file can sometimes be difficult. Officials do not always respond to requests for documents, and the lack of photocopy machines can hinder officials' response to such requests. Although creative approaches are sometimes necessary, most advocates interviewed were able to obtain information they needed.

## Factor 6: Right of Audience

***Lawyers who have the right to appear before judicial or administrative bodies on behalf of their clients, are not refused that right, and are treated equally by such bodies.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Positive</i></b>
Advocates are not refused the right to appear before judicial or administrative bodies and are generally treated equally by such bodies.	

### Analysis/Background:

Advocates have the right "to represent clients' legitimate interests in court, law enforcement agencies, public authorities, and other organizations." LAW ON THE LEGAL PROFESSION art. 45(1)(a). Only an advocate can represent a criminal defendant before investigation bodies or in court. In civil lawsuits, on the other hand, parties may either defend their interests by themselves or through a representative. CIV. PRO. CODE, art. 75(1). Such a representative need not be an advocate, nor even have any legal training at all, although such representatives are often civil practice attorneys with a law degree. To appoint a representative, the party must execute a proxy specifying the representative's powers to act on his or her behalf and have it authenticated in a notary's office. *Id.* art. 80(1), (2).

Advocates also sometimes represent clients in civil matters pursuant to a proxy, rather than a mandate, to avoid paying taxes. Either document must be filed with the court. *Id.* art. 80(5); *cf.* CRIM. PRO. CODE arts. 70(7)(3), 70(8). However, because a mandate is issued by the advocate's office, the amount of the honorarium is included in the office's books. This is not necessarily true in the case of a proxy, thus making it easier for advocates to avoid paying taxes on income earned under a proxy. It was also reported that Transnistrian advocates occasionally represent clients in civil cases in Moldova pursuant a proxy, because under Transnistrian law they cannot be members of any other bar, including the Moldovan Bar.

Most advocates said that they had no problems appearing in courts and before administrative bodies. A few did, but such instances seem to have been very much the exception than the rule. For example, in a hearing involving an alleged administrative contravention (minor crime), an advocate presented his license and a contract with the client. The judge insisted that he present a proxy to the court. However, the question of equality of treatment is more difficult to answer. Several interviewees suggested that judges are more likely to defer to prosecutors than

advocates because traditionally prosecutors represent the interest of the state and the integrity of the legal system. The low acquittal rate in criminal trials, estimated to be 5%, would seem to support that view. On the other hand, a judge pointed out that reluctance to acquit a defendant comes from the fear that people would assume it was to the result of corruption.

## II. Education, Training, and Admission to the Profession

### Factor 7: Academic Requirements

***Lawyers have a formal, university-level, legal education from institutions authorized to award degrees in law.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
Advocates, as well as other jurists (including civil practice attorneys), have a formal university-level legal education. However, until recently the law faculties of many institutions failed to provide a satisfactory level of legal training. Since then, the state has closed some, but not all such institutions.	

#### Analysis/Background:

Jurists, including civil practice attorneys, are those who by definition have a university degree in law. Unless they go on to become judges, prosecutors, or advocates, no laws govern their profession. Advocates are specifically required to have a university degree in law. LAW ON THE LEGAL PROFESSION art. 8(2). In Moldova, the first degree in law is an undergraduate degree, requiring four or five years of university education, depending upon whether the student had completed twelve or eleven years, respectively, of secondary education before matriculation. Several of the law faculties in Moldova also have graduate programs and award masters degrees and doctorates. It should be noted, however, that authorized representatives in civil trials are not required to have any legal training. See Factor 6.

All state and private educational institutions, including law faculties, are accredited by the Ministry of Education through its Department for Evaluation and Accreditation of Educational Institutions. LAW OF THE REPUBLIC OF MOLDOVA ON EVALUATION AND ACCREDITATION OF EDUCATIONAL INSTITUTIONS IN THE REPUBLIC OF MOLDOVA arts. 2, 7(12), Law No. 1257-XIII of 16.07.1997, M.O. 69-70/583 (1997), *last amended by* Law No. 333-XV of 24.07.2003, M.O. 200-203/773 (2003). Criteria for evaluation and accreditation are comprehensive and “relate to all the areas of creation and operation of educational institutions: professionalism of their faculty, content and form of organizing the educational process, technical-material basis [e.g., sufficient classrooms and an adequate library], classified list of specialties, economic-financial activity, scientific activity (in undergraduate and graduate educational institutions), quality and efficiency of the educational-training process, and conformity of the level of preparation of those trained to state educational standards.” *Id.* art. 3. Evaluation and accreditation generally occurs every five years following initial accreditation. *Id.* art. 7(8). The Bar as such is not involved in evaluation and accreditation of law faculties.

Moldova State University’s law faculty, established in 1959, was the first law faculty in Moldova, and for many years was the only law faculty. At the time of Moldova’s independence in 1991, about two hundred law students matriculated each year. Since then, there has been a proliferation of law faculties and a considerable increase in the number of students enrolled in the law faculties. For example, in 1992, 222 students graduated from the law faculty of Moldova State University, compared to 844 in 2003. In addition to regular law students who attend classes,

some students receive their training by correspondence; that is, they come to the law faculty only to take examinations. The following table contains information on the number of graduates from the major law faculties in 2003:<sup>12</sup>

Law Faculties	Law Graduates		Total
	Regular	Correspondence	
<b>State Law Faculties</b>			
Moldova State University	548	296	844
“Stefan cel Mare” Police Academy	136	126	262
Balti State University	129	186	315
Academy of Economic Studies of Moldova	0	155	155
Comrat State University	51	56	107
<b>Subtotal</b>	<b>864</b>	<b>819</b>	<b>1,683</b>
<b>Private Law Faculties</b>			
Law Academy of Moldova	165	161	326
Universitatea Cooperatist-Comerciala	63	40	103
Free International University of Moldova (ULIM)	166	124	290
Moldovan Branch of Modern Humanistic Institute	31	10	41
Universitatea Real Umanistica, Cahul	N/A	N/A	132
Slavic University	69	35	104
<b>Subtotal</b>	<b>494</b>	<b>370</b>	<b>996</b>
<b>Total</b>	<b>1,358</b>	<b>1,189</b>	<b>2,679</b>

Of these 2,679 law graduates in 2003, only a few could hope to become advocates. The total number of advocates actively practicing at the end of that year was 1,027. See ORDER ON PUBLICATION OF THE LIST OF ADVOCATES, Ministry of Justice Order No. 520, M.O. 254-61/364 (2003). The situation is similar in Transnistria, which has six law faculties that grant university degrees in law, in addition to three colleges of law that do not grant university degrees. Of the 500 or so graduates of Tiraspol law faculties (compared to 80 advocates in Transnistria), only a small percentage are able to find work as advocates.

In practice, the requirement that advocates possess a university-level law degree is complied with in Moldova. There is no evidence of unlicensed schools awarding diplomas in law. However, until recently, there were as many as forty law faculties, not all of which offered satisfactory legal education. For example, at least one had only a single full-time professor. Since then, many newer law faculties have been closed. There is a similar shortage of qualified law professors in Transnistria, only four of whom have masters degrees

The government has approved a concept for the policy of law specialists. DECISION ON THE APPROVAL OF THE CONCEPT OF THE POLICY OF LAW CADRES, Government Decision No. 1385 of 30.10.2002, M.O. 149-150/1523 (2002). If implemented, the policy will bring about significant changes in the education and specialization of jurists, including those whose profession is not now regulated by law. For example, after completing an undergraduate degree in law, those who wish to become jurisconsults would be required to complete an additional year of specialized training, including practical skills.

<sup>12</sup> Because information was available only on the total number of law graduates from Universitatea Real Umanistica, Cahul, the total numbers of regular and correspondence students do not include graduates of that law faculty, although the total number of all graduates does.

## Factor 8: Preparation to Practice Law

*Lawyers possess adequate knowledge, skills, and training to practice law upon completion of legal education.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>In the law faculties, memorization of theoretical knowledge is emphasized, at the expense of analytical and practical skills. The desire for tuition discourages law faculties from applying rigorous standards to students, and bribery is said to be common. Although the best students are very good, most are poorly prepared to practice law.</p>	

### Analysis/Background:

To become an advocate, a graduate of the law faculty must undergo an internship of up to one year, ostensibly to acquire practical skills, and then pass a qualification examination to demonstrate sufficient knowledge of the law. See Factor 9. No additional classes or other formal instruction is required to become an advocate. However, interns can participate in the continuing legal education (CLE) seminars of the Law Center (an NGO that has offered CLE seminars for advocates since 1998), and in 2003 the Law Center offered two seminars to approximately 40 interns on the profession of advocate. See Factor 14.

Almost without exception, interviewees said that the quality of legal education is poor. Theoretical knowledge and rote memorization are emphasized. Typically, the professor dictates his or her notes to the students, who are then expected to memorize them. Critical thinking is rarely taught. Some students reportedly pass examinations by paying bribes to professors or relying on personal connections. Beyond that, economic considerations discourage the application of rigorous standards, because students are often valued not for their academic achievements, but for the tuition they pay. As one interviewee put it, legal education has become commercial: you pay and get a diploma. Practical skills are not taught, and the month-long mandatory summer internships with courts, police, or prosecutors are said to be perfunctory and of little value. Opportunities to gain practical experience have improved for some students in the four law faculties that now have law clinics (Balti State University, Comrat State University, Moldova State University, and Tiraspol State University). Some 35-45 students participate in each of the clinics, providing live client consultations and even representation in court. Many instructors in the law faculties are young and have never practiced law themselves. The result of this situation is that most law graduates lack the skills to practice law. One interviewee said of law graduates that many are diploma lawyers, but few are real lawyers. Nevertheless, interviewees pointed out that students who are motivated to study learn and do well. The increased numbers of law faculties and students has increased the number of poorly trained students, but the best students are still very good. These observations are not restricted to Moldova west of the Nistru. According to one advocate in Transnistria, the quality of legal education there is poor. Only the legislation of Transnistria is taught, with no courses on international law or human rights.

## Factor 9: Qualification Process

***Admission to the profession of lawyer is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
A candidate must pass an oral qualification examination to become an advocate, following successful completion of a supervised internship. Civil practice attorneys are not required to undergo an internship or pass a qualification examination.	

### Analysis/Background:

To become an advocate, one must be a citizen, with full legal capacity, have a university degree in law, enjoy “an irreproachable reputation,” complete an internship, and then pass a qualification examination. LAW ON THE LEGAL PROFESSION art. 8(2). A candidate is not considered to have an irreproachable reputation who was convicted of a serious, very serious, or exceptionally serious crime, even if the criminal record was annulled (see CRIM. CODE art. 111); convicted of a lesser offense if the criminal record was not annulled; convicted of violating fundamental human rights; excluded from the legal profession or whose license was withdrawn for ethical violations; dismissed from a law enforcement body or as a judge, notary, legal consultant, or civil servant for ethical violations; or engaged in behavior incompatible with the Code of Ethics. *Id.* art. 8(3).

The first step for a law graduate seeking to become an advocate is to find an experienced advocate willing to accept him or her as an intern. The internship is for up to one year, depending on the candidate’s level of experience. *Id.* art. 10(1). An intern is permitted to represent clients in civil and administrative cases in district courts, in the circuit economic court, and before public authorities. *Id.* art. 14(3). The supervising advocate must have at least five years experience and may supervise no more than two interns at one time. *Id.* art. 10(4)-(5). A contract setting forth the terms of the internship must be filed with the Commission for Licensing Advocates. *Id.* art. 10(2)-(3). During 2003, the commission received 246 petitions for internships and registered 193 internship contracts.

Finding a supervising advocate can be difficult and often depends on knowing an advocate or knowing someone who does. Interviewees noted that some supervising advocates take advantage of the shortage of internships by not paying interns or even requiring them to pay the supervising advocate for the internship. Other interviewees pointed out that an intern frequently does not contribute much to the advocate’s practice and, moreover, can earn fees themselves by representing clients in civil or administrative cases. Because there are no requirements as to the content of the internship or the skills an intern should acquire, interns’ experience can differ widely. As one interviewee put it, a few lucky interns have supervising advocates who take the time to explain things to them, but others are like someone who learned to swim by being thrown into the water. They sometimes have little experience in the representation of criminal defendants, which is the quintessential work of advocates. Because of the limited number of courtrooms, judges often hold hearings in their offices, which are usually too small to permit interns to accompany their supervising advocates.

After successful completion of the internship, a candidate may apply to the Commission for Licensing Advocates to take the qualification examination. The secretary of the commission and then the commission itself review the candidate’s documentation to determine whether to admit him or her to the examination. REGULATION ON APPROVING THE REGULATION ON THE MANNER FOR PASSING THE QUALIFICATION EXAMINATION FOR ADMISSION TO THE LEGAL PROFESSION arts. 4-6, Ministry of Justice Regulation No. 528 of 23.12.2003, M.O. 254-261/368 (2003) [hereinafter, REGULATION ON THE QUALIFICATION EXAMINATION]. A candidate who is denied permission to take



the qualification examination may request a summary of the commission's minutes. *Id.* art. 7. The examination is given in the capital city of Chisinau. During 2003, the commission received 98 applications to take the examination, which was offered six times.

The commission determines what subjects will be tested and then develops specific questions for each examination. *Id.* arts. 10-11. The subjects are those taught in the law faculty, and questions focus on theory rather than practice. *See, e.g.,* AVOCATUL POPORULUI, No. 7, at 13-16 (subjects to be tested in qualification examination). Thus, candidates are not tested on critical thinking, ability to apply the law to facts, or practical skills. The examination is oral, and each candidate answers one question selected at random from each of three piles of questions. REGULATION ON THE QUALIFICATION EXAMINATION art. 11. Thus, every candidate answers different questions, making objective comparisons among candidates difficult. Commission members may ask candidates additional questions if they wish. Members then assign a mark (on a 10-point scale) to the candidate's answers, and an average is calculated. *Id.* arts. 12, 15. An average mark of at least 8 is required to pass. *Id.* art. 13. The mark cannot be appealed, because it represents the collective judgment of the commission. Pass rates are low, which some regard as evidence of the rigorous nature of the examination. For example, only 42 out of 98 candidates passed the qualification examination in 2003. Based on the results of the examination, the commission adopts a decision to admit or not admit each candidate. *Id.* art. 16. Minutes of the session are also prepared and sent to the Ministry of Justice, together with the decisions and supporting documentation. *Id.* art. 19-20. The Ministry of Justice then issues licenses to the successful candidates. *Id.* art. 22. Unsuccessful candidates may retake the examination after at least six months or may appeal the commission's decision to a court of law. LAW ON THE LEGAL PROFESSION art. 11(2)-(3).

Civil practice attorneys are not required to undergo an internship or pass a qualification examination.

## Factor 10: Licensing Body

***Admission to the profession of lawyer is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
Decisions on admission to the profession of advocate are entrusted to an impartial body, but the process for administering the qualifying examination is subjective and lacks transparency. There is no effective right to appeal a failing mark.	

### Analysis/Background:

This factor focuses on admission to the profession of advocate, because there is no state body or professional organization that licenses civil practice attorneys.

The Commission for Licensing Advocates receives and reviews applications from candidates and administers qualification examinations following satisfactory completion of their professional internships. LAW ON THE LEGAL PROFESSION arts. 18(2), 19. The commission consists of eleven members appointed for four-year terms by order of the minister of justice. *Id.* art. 18(1). Six—a majority of the members—are advocates elected by the Bar Congress, two represent law enforcement bodies, two represent the Ministry of Justice, and one is a university law professor elected by the university senate.<sup>13</sup> *Id.* arts. 18.1, 32(2)(a); *see* ORDER ON APPROVING THE

<sup>13</sup> Although the law does not specify which university senate is to elect a law professor, in practice it has been that of Moldova State University in Chisinau.

COMPOSITION OF THE COMMISSION FOR LICENSING ADVOCATES AND ITS REGULATIONS, annex 1, Ministry of Justice Order No. 59 of 10.02.2003, M.O. 30-34/45 (2003).

The Ministry of Justice issues licenses to candidates who pass the qualification examination. LAW ON THE LEGAL PROFESSION arts. 11(1), 17(2), 57(2)(d). A candidate who fails the examination may retake it after at least six months or may appeal the decision to a court of law. *Id.* art. 11(2)-(3). The right to appeal, it should be noted, merely involves the commission's decision not to admit a candidate to the profession of advocate, not the candidate's mark. Because the examination is oral and answers are not transcribed, a candidate would have no basis to demonstrate to a court that the mark was improper. In addition, each candidate answers different questions, making it difficult to compare one candidate's performance with another's. Furthermore, after the exam candidates are only informed of their average mark, but not the commission's reasons for the mark. Thus, a failing candidate is effectively precluded from appealing the mark—the only issue of any significance. He or she can only appeal the commission's decision not to admit him or her to the profession, which is unlikely to be overturned when the candidate received a failing mark. Perhaps this accounts for the novel argument made by a former judge with ten years experience, whose average mark on the qualification examination was 7.6. Because the Regulation on the Qualification Examination defines a passing mark as 8 or more (see Factor 9), the commission did not recommend issuance of a license to him. He then filed a lawsuit, claiming that 5 or more should be a passing mark for purposes of the qualification examination, because that is a passing mark for students under the law on education. LAW ON EDUCATION art. 14, Law No. 547-XIII of 21.07.1995, M.O. 62-63/692 (1995).

Although interviewees agreed that the number of candidates who pass the qualification examination is low (previously almost all passed), they disagreed about its significance. By its very nature, the qualification examination raises suspicions of subjectivity, coupled with a lack of transparency. Several interviewees reported rumors that it is either necessary to pay a substantial bribe or have personal connections with members of the commission to pass. Regardless of the truth of these rumors, their existence demonstrates the importance of increasing the transparency of the process. On the other hand, many believe that the low pass rate is a reflection of the rigorous nature of the exam and a lack of preparation by many candidates. Several interviewees argued that the examination was fair and impartial. One supported his contention by noting that when there is a disparity in the individual marks for a candidate, commission members discuss the reasons for their marks and attempt to reach consensus. In any event, the process for administering the qualifying examination is subjective and lacks transparency.

In Transnistria, candidates must also pass a qualification examination following a six month internship. The examination is administered by more experienced advocates, but, in contrast to Moldova west of the Nistru, most candidates reportedly pass the examination.

## **Factor 11: Non-discriminatory Admission**

***Admission to the profession of lawyer is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
Admission to the profession is generally not denied on a discriminatory basis, but Russian speakers may face significant obstacles to admission.	

### Analysis/Background:

All citizens are guaranteed equality before the law, without regard to “race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property, or social origin.” CONST. art 16(2). Furthermore, access to secondary and higher education is open to all equally, based on personal merit. *Id.* art. 35(7). Thus, there should be no discrimination in admission to the law faculty and therefore to any of the legal professions.

With one possible exception, interviewees invariably reported the absence of discrimination in admission to the profession of advocate. That exception is language. Questions on the qualifying examination are written in the state language, Moldovan (i.e., Romanian), which puts Russian speakers at a significant disadvantage. Although article 6(1) of the 1999 Law on the Legal Profession required advocates to be able to speak the state language, the present Law on the Legal Profession does not. As a general rule, judicial proceedings are required to be conducted in Moldovan, but may also be conducted in another language acceptable to a majority of the participants. CONST. art. 118(1), (3). In Gagauzia hearings are usually conducted in Russian. Many Moldovan law graduates speak both Moldovan and Russian, but ethnic Russian graduates are likely to speak only Russian.

One interviewee recounted an incident in which a Russian speaking candidate answered the wrong question on the qualifying examination, relying on a faulty translation by one of the other candidates. Russian speakers also face difficulties because follow up questions are asked in Romanian. Moreover, a member of the commission told of giving a Russian speaking candidate a mark of 9 (out of 10), but another member of the commission gave him a 1, simply because he had answered in Russian. It is unclear whether these are isolated incidents or represent more pervasive discrimination against Russian speakers. Perhaps these obstacles help to explain the shortage of advocates in Gagauzia, where most people speak Russian.

## **III. Conditions and Standards of Practice**

### **Factor 12: Formation of Independent Law Practice**

*Lawyers are able to practice law independently or in association with other lawyers.*

<b>Conclusion</b>	<b>Correlation: Positive</b>
Advocates practice in individual offices or associated with one or more other advocates. Although the arrangement is not contemplated by law, some advocates have also organized limited liability companies to practice law and share the profits of the company.	

### Analysis/Background:

The Law on the Legal Profession envisions two forms for organization of law practices, individual advocate's offices and associated advocates' offices. LAW ON THE LEGAL PROFESSION art. 26(1). As its name suggests, an individual advocate's office consists of a single advocate. *Id.* art. 27. An associated advocates' office can be founded by two or more advocates who enter into a contract governing their legal relationship, but they practice individually, not as partners. *Id.* art. 28(1), (4). For example, they do not share profits of the office. A law office cannot be located in the advocate's home. *Id.* art. 26(4). However, some advocates do in fact practice out of their homes, but little effort is made to discover such violations. All law offices, whether individual or associated, must register with the Ministry of Justice, which maintains a registry of law offices. *Id.*

arts. 29(1), 57(2)(e). Registration is necessary to obtain a stamp (seal) and to open bank accounts. *Id.* art. 29(2).

Moldova adheres to the notion, inherited from Roman law, that the practice of law is not an entrepreneurial activity. See LAW ON THE LEGAL PROFESSION art. 1(3). As a result, advocates may not work as employees, except in teaching or scientific activities, or serving as an arbitrator. *Id.* art. 9. An advocate therefore cannot work as an employee of another advocate. Advocates who wish to work as employees of an enterprise or serve as government lawyers must apply to have their advocate's license suspended. *Id.* art. 12(1).

Although the law only provides for advocates to practice in individual or associated offices and their professional activities are not supposed to be entrepreneurial in character, more than ten law firms in Chisinau are organized as limited liability companies (LLCs). The advocates who are owners of these LLCs typically receive a salary and a percentage of the profits of the enterprise. They hire jurists as employees. Such law firms do not register with the Ministry of Justice as advocates' offices, but as commercial enterprises. This structure technically violates the prohibition against engaging in entrepreneurial activities. See *id.* art. 1(3).

In Transnistria, advocates practice either in individually registered offices or in a "consultation bureau," the approximate equivalent of an associated advocates' office, which is created by the bar association. Consultations are a carryover from the Soviet era when all advocates were required to work in state-sponsored offices.

### Factor 13: Resources and Remuneration

***Lawyers have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
Most advocates have access only to basic legal information, and few outside the larger cities have adequate resources to provide legal services. Although advocates in the larger cities who represent enterprises and prominent advocates are adequately remunerated, the vast majority of advocates do not specialize and will accept almost any legal work, often for inadequate remuneration.	

#### Analysis/Background:

Most advocates have access to basic legal information. Almost all the advocates who were interviewed had copies of the new codes, which they purchased with their own money. In addition, many subscribe to *Monitorul Oficial*, the official legal gazette for the Republic of Moldova, and thus have access to new laws and regulations. Because of the constitutional right to know one's legal rights and duties, the state is required to publish all laws and other normative acts. CONST. art. 23(2). Laws and government decisions and decrees that are not published in *Monitorul Oficial* are without effect. CONST. arts. 76, 102(4). Constitutional court decisions are also published in *Monitorul Oficial*. An annual subscription costs MDL 856 (about \$78).

However, many advocates have few legal resources beyond the codes and *Monitorul Oficial*, and there are few law libraries in the country. Advocates who teach in a law faculty do have access to university law libraries, and in Chisinau there is a Public Law Library, but for many advocates research in a library is not feasible. Few advocates can afford to subscribe to legal databases, but those with Internet access can obtain information from [www.docs.md](http://www.docs.md), a free legislative database.

Ironically, advocates in Transnistria have better access to legal literature. Because their laws correspond to those of the Russian Federation, they are able to use Russian law books.

Courts are required to provide advocates with office space for working on cases in the courts. LAW ON THE LEGAL PROFESSION art. 44(7). In addition, local public administration authorities are to contribute to providing office space for advocates and, “[i]f necessary, grant facilities to lawyers’ offices and lawyers’ associations, including those connected to the payment of office rent.” *Id.* art. 57(3)(a)-(b). In reality, office space for advocates is scarce and expensive. It is not uncommon for four or even six advocates to work in the same room. The situation in Transnistria is similar. In Gagauzia advocates lost their offices in the Ministry of Justice building when it was renovated. Because of the scarcity of office space in Comrat, they had to work without offices for four months, often meeting with clients on the street. Lack of office equipment is another problem advocates face. Indeed, one said that having a desk and telephone was the dream of many Moldovan advocates. Computers are uncommon, especially in Transnistria, where only three of the eighty advocates reportedly have computers.

This lack of resources is due in large part to the inadequate honoraria received by many advocates. In Chisinau, prominent individual advocates and those who represent enterprises are adequately remunerated, but the vast majority of advocates in Moldova do not specialize and will accept almost any legal work, often for inadequate remuneration. The Bar Council has authority to approve minimum fees for advocates, but has not yet done so. *Id.* art. 35(1)(d). However, many clients in rural areas probably could not afford to pay even minimum fees.

Three fee arrangements are commonly employed: fixed fees, an arrangement common in criminal cases; fixed amounts paid monthly as a retainer; and billing by the hour. The advocate-client relationship is based on a contract that specifies the amount of fees to be paid. *Id.* arts. 52(1), 54(2); see AVOCATUL POPORULUI, No. 2, at 2-5 (2003) (model contracts approved by the Bar Council). Several interviewees said that it is not unusual for the contract to specify an honorarium less than the amount actually paid—a subterfuge that allows advocates to avoid paying taxes on the full amount. Actual honoraria charged can vary widely, ranging from \$50-100 in a simple civil case or \$100 for a criminal case to as much as \$1,000 or even \$5,000 in a complicated case involving a serious crime.

## Factor 14: Continuing Legal Education

***Lawyers have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of lawyer.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
Although there is a critical need for advocates to learn practical skills and become familiar with new legislation, most advocates do not have access to continuing legal education. Continuing legal education is heavily dependent on funding from international donors and is therefore not sustainable.	

### Analysis/Background:

There is a great unmet need for professional education for advocates and other lawyers in Moldova, not only to overcome the deficiencies of their legal education and internships, but also to become acquainted with the plethora of new legislation. For example, in June 2003, a new Civil Code, Civil Procedure Code, Criminal Code, and Criminal Procedure Code came into force, replacing Soviet era codes. These codes include significant concepts that were either not

included or were not well developed in the codes they replaced. Most continuing legal education (CLE) has thus far been directed at advocates, with little attention to other lawyers.

The Ministry of Justice, “within the limits of its competence,” is to contribute to providing training courses for advocates. LAW ON THE LEGAL PROFESSION art. 57(2)(b). One of the Bar Council’s responsibilities is to organize training courses for advocates. *Id.* art. 35(f). However, as discussed below, it does not directly organize such courses.

In January 1996, with support from ABA/CEELI, the Collegium of Advocates (the Bar’s predecessor) established the Law Center of Advocates, an NGO to provide CLE. In addition to publishing books and the magazine *Avocatul Poporului*, the Law Center has offered CLE seminars since 1998. In 2003, it conducted twenty-four seminars—many of them on the new codes—with support from ABA/CEELI. Alexei Barbaneagra, *Activity of the Law Center of Advocates in 2003*, AVOCATUL POPORULUI, No. 3, at 3 (2004). A total of 502 persons attended these seminars, which were held outside the capital in Orhei, Balti, Cahul, Telenesti, Briceni, Ocnita, and Hincesti, in addition to Chisinau. *Id.* Because of the small number of advocates outside Chisinau, judges and prosecutors were also invited to those seminars, as well as advocates and interns. *Id.* Among the seminars sponsored by other donors in 2003 were two two-day seminars on changes under the new civil and criminal codes. The Law Center almost never charges for its seminars or publications, and the Bar has actively discouraged the Law Center from doing so. It is therefore largely dependent on funding from international donors. For example, in 2003 it received support from the UN High Commissioner for Refugees, Center of Information and Documentation of the Council of Europe, the United States Embassy, and ABA/CEELI. However, the Law Center receives no funding from the Bar for its CLE programs.

Because of its dependence on international donors, the long-term sustainability of the Law Center is doubtful. One consequence of this dependence is that some ad hoc CLE programs are offered on subjects of interest to donors, with little regard to the actual needs of advocates. For example, over the years many seminars have been offered on refugees or the European Convention on Human Rights. Although these are important subjects, most advocates never deal with them in their day-to-day practice. The Law Center attempts to plan its programs with an eye to the subjects that advocates are interested in, as well as recent legislative developments, but at the end of the day donor preferences are determinative. Another consequence of not charging for its seminars is that the Law Center has no real way of knowing whether its programs are sufficiently valuable to advocates that they would be willing to pay to attend them.

Although there are other CLE providers in Moldova, the Law Center offers most of the training for advocates. Unfortunately, its efforts are presently inadequate to meet the needs of advocates. For example, in 2003, 502 persons (not all of whom were advocates) attended seminars, compared to 1,027 practicing advocates. Thus, on average, less than half of all advocates attended one 2½-hour seminar in 2003. This figure is actually even lower, because some advocates in Chisinau attend multiple CLE programs each year, while many advocates outside Chisinau reported that they never or only rarely attended a CLE program. A common criticism of CLE is that the seminars are not sufficiently practical. Another concern is that seminars are taught by the same relatively small group of senior judges and advocates.

At the insistence of the president of the Law Center, the Bar Congress established a mandatory CLE requirement on 26 March 2004. All advocates must now attend eight hours of CLE annually. Unfortunately, the details necessary to implement this requirement, such as accreditation of CLE providers or CLE programs, have yet to be determined. Lack of capacity to provide the necessary hours of CLE is a concern, although the Law Center hopes to address this by creating regional CLE centers. However, it is probably unrealistic to expect the Law Center to expand its activities sufficiently to make a significant contribution toward meeting the demands for mandatory CLE. Mandatory CLE could help the Law Center to become sustainable if it charged at least a token sum for its seminars. The Bar’s mechanism for enforcing a mandatory CLE requirement is

unclear, as is its legal authority for imposing the requirement in the first place; one interviewee suggested that further legislation may be necessary.

Advocates in Gagauzia have had no opportunities for CLE in recent years. The situation is exacerbated by the fact that the vast majority of advocates there speak only Russian and could not, for example, simply attend a CLE seminar at the Law Center in Chisinau, even if they were invited. The situation for advocates in Transnistria is even worse. They face the same difficulties as advocates in Gagauzia, but work in a legal system different from that of the rest of Moldova. Most CLE seminars would therefore be of little value to them, except on subjects such as the European Convention on Human Rights or lawyering skills.

## Factor 15: Minority and Gender Representation

***Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of lawyer.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
Ethnic Ukrainians, Russians, and Gagauz are somewhat under-represented as advocates. In addition only about one-quarter of advocates are women, and there are no women serving on the Bar Council.	

### Analysis/Background:

Moldova is a multi-ethnic state. According to the most recent official statistics (from 1989), the population of the former Soviet Socialist Moldavian Republic consisted of 64.5% Moldovans, 13.8% ethnic Ukrainians, 13% ethnic Russians, 3.5% ethnic Gagauz, and 2% ethnic Bulgarians, as well as lesser percentages of Roma, Jews, and others. There is considerable uniformity as to religion. According to a national poll conducted by the Institute for Public Policies in 2003 and published in the newspaper *Timpul*, 79.2% of Moldovans outside Transnistria identified themselves as Orthodox Christians, 10.9% as having no religious affiliation, 3.2% as members of other Christian denominations, and 2.3% as members of other religious communities or who did not answer. Neither the Bar nor the Ministry of Justice maintains statistical data on advocates by nationality, religion, or gender. This absence of relevant statistics makes it difficult to evaluate the representation of ethnic and religious minorities among advocates. However, the Presidium of the Collegium of Advocates presented a report to the first Congress of Advocates (under the prior law on the legal profession), which included information on the ethnic makeup of advocates as of December 1999. According to that report, 79.5% were Moldovans, 7.3% ethnic Russians, 5.7% ethnic Ukrainians, 2.9% ethnic Romanians, 2.1% ethnic Bulgarians, 2% ethnic Gagauz, 0.2% ethnic Byelorussians, and 0.3% others. See AVOCATUL POPORULUI, Nos. 1-3, at 4 (2000). These statistics are not directly comparable to those of the 1989 census for two reasons. First, they are a decade later, following a period in which significant demographic changes occurred. Second, the 1989 population data include Transnistria, which has a disproportionate number of ethnic Russians and Ukrainians, whereas the 1999 data on advocates do not include Transnistria. Nevertheless, it appears that ethnic Russians, Ukrainians, and Gagauz are somewhat underrepresented in the profession. This is consistent with the observations of interviewees that administration of the qualifying examination only in the Romanian language poses a disadvantage to non-Romanian speakers. See Factor 11. No statistics were found on the religions of advocates, but interviewees did not identify any under-representation of religious minorities.

The Department of Statistics and Sociology of the Republic of Moldova estimated that as of 1 January 2000, 52.1% of the population was female and 47.9% male. Although official statistics on

the numbers of male and female advocates are not available, the gender distribution of advocates can be determined by counting the number of male and female names in the published list of advocates. As of December 2003, 75.7% of advocates were men and 24.3% were women. See ORDER ON PUBLICATION OF THE LIST OF ADVOCATES, Ministry of Justice Order No. 520 of 18.12.2003, M.O. 254-261/1347 (2003). Thus, women advocates constitute less than half their numbers in the population at large. The percentage of women advocates varies greatly from *raion* to *raion*, but as a general rule fewer women advocates are found outside Chisinau. For example, in Cantemir, none of the 6 advocates are women; in Causheni, none of the 7 advocates are women; in Orhei *raion*, 1 of 15 advocates is a woman (6.7%); in Soroca, 2 of 14 advocates are women (14.3%); in Edinet, 2 of 11 advocates are women (18.2%); in Comrat, 2 of 7 advocates are women (28.6%); and in Besarabeasca, 2 of 4 advocates are women (50%). By contrast, 50-60 of the 80 advocates in Transnistria are women. Significantly, few women advocates have achieved positions of authority in the profession. For example, the officers and all twenty-one members of the Bar Council elected at the first Congress of the Bar in 2002 are men. See AVOCATUL POPORULUI, No. 1, at 1-3 (2003). The under-representation of women in the profession is partly a result of traditions in legal education in the Soviet era, when very few women were students in the law faculty. Since then, the number of female students has increased dramatically, although many women graduates choose to become notaries, jurisconsults, judges, and prosecutors rather than advocates. Nevertheless, the percentage of women advocates will likely increase over time. As of December 2003, 76 (41%) of the 185 persons performing internships were women. ORDER ON PUBLICATION OF THE LIST OF ADVOCATE INTERNS, Ministry of Justice Order No. 521 of 18.12.2003, M.O. 254-261/365 (2003).

## Factor 16: Professional Ethics and Conduct

***Codes and standards of professional ethics and conduct are established for and adhered to by lawyers.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
The Bar adopted a Code of Ethics for advocates, but it is unclear to what extent this code actually influences the professional activity of advocates. No enforceable code of ethics exists for non-advocate lawyers.	

### Analysis/Background:

Norms of professional ethics and conduct exist for advocates. Some are included in the Law on the Legal Profession. For example, advocates, as well as interns and specialists employed by advocates, must maintain the confidentiality of confidential information or documents obtained while representing a client. LAW ON THE LEGAL PROFESSION arts. 16, 14(4), 15(4). Advocates may not represent a client if a conflict of interest would result or if the client is a relative. *Id.* art. 46(2). Nor may advocates act against a client's "legitimate interests" or take a position without consulting the client. *Id.* art. 46(3), (4). Although advocates may specialize, they may not advertise. *Id.* arts. 45(7), 56.

Another source of norms of professional ethics and conduct is the code of ethics adopted at the inaugural Congress of the Bar. CODE OF ETHICS FOR ADVOCATES OF THE BAR OF THE REPUBLIC OF MOLDOVA (27 Dec. 2002), AVOCATUL POPORULUI, No. 1, at 1; *id.*, Nos. 10-12, at 1 (2002) [hereinafter CODE OF ETHICS]. Although brief, it is reasonably comprehensive and provides guidance on such issues as maintaining secrets and confidential information of clients, responsibilities of advocates to clients, avoidance of conflicts of interest, and charging reasonable honoraria. CODE OF ETHICS arts. 3, 6, 7, 8, 9. The code also provides guidance on the proper relations between advocates and criminal investigation bodies, courts, public authorities, and also



other advocates. *Id.* arts. 11, 12. However, it does not prohibit ex parte communications. The Code of Ethics norms are enforceable; a serious violation of the code can be grounds for withdrawing an advocate's license. LAW ON THE LEGAL PROFESSION arts. 22(1)(d), 48(1).

Although the qualification examination for advocates is reported to include questions on the Code of Ethics, none of the advocates interviewed said that they had received any training on the code or, for that matter, that they were aware of any such training having been offered. Whether the Code of Ethics actually influences the conduct of advocates is uncertain. Many interviewees doubted that it had any impact on the unethical conduct of some advocates. For example, although there are reports that advocates represent clients in civil cases by proxy rather than mandate in order to avoid paying taxes and that some advocates serve as intermediaries in bribing judges or prosecutors, it is difficult to know how widespread such practices are.

There are few rules of professional responsibility for civil practice attorneys. See, e.g., CIV. PRO. CODE art. 78(2) (prohibiting persons who provided legal assistance to adverse parties from acting as a party's representative). Because they are not members of a legally recognized profession, there is no law governing their professional activity and no code of ethics. Both the Law on the Legal Profession and the Code of Ethics apply only to advocates, and civil practice attorneys are not bound by their standards of professional ethics and conduct. Nor are advocates bound by the Code of Ethics in their dealings with civil practice attorneys. The code does not govern the relations of advocates to civil practice attorneys. This can have significant consequences. For example, although an advocate is prohibited from communicating directly with a person whom the advocate knows is represented by another advocate, this prohibition does not apply when the person is represented by a jurist who is not an advocate. See CODE OF ETHICS art. 12(5). Interestingly enough, despite the lack of regulation of non-advocate jurists, the Ministry of Justice has reportedly received no complaints about their activities.

Although the Union of Jurists has not issued a code of ethics for its members, it has published a vision of legal ethics, which includes non-binding aspirations for professional conduct. See *Deontology of the Profession of Jurist*, in UNION OF JURISTS OF MOLDOVA, "SPRE UN STAT DE DREPT": DOCUMENTE ȘI EVENIMENTE [TOWARD A RULE OF LAW STATE: DOCUMENTS AND DEVELOPMENTS] 31-32 (2004).

## Factor 17: Disciplinary Proceedings and Sanctions

***Lawyers are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
The Bar's Commission for Ethics and Discipline has insufficient authority to punish advocates for violating the standards and rules of the profession and, in the case of serious violations, depends on the Commission for Licensing Advocates to recommend withdrawal of an advocate's license. Moreover, the Commission for Ethics and Discipline has no professional staff to investigate complaints and relies on the efforts of its members. It has been criticized for its comparative inactivity. No comparable body exists to discipline civil practice attorneys.	

### Analysis/Background:

The Bar has relatively limited authority to impose sanctions for violations of standards or rules of the profession. Its Commission for Ethics and Discipline, which consists of at least fifteen advocates with not less than five years of professional experience, is charged with investigating complaints of misconduct by advocates. LAW ON THE LEGAL PROFESSION arts. 41(1), 48(2).

Through 26 March 2004, 230 complaints had been filed with the commission. It was reported during interviews that two parallel procedures for investigating complaints have developed, one formal and the other informal.

In the formal procedure, the secretary of the Bar registers all complaints filed with the Bar. Complaints filed more than six months after the violation allegedly occurred are dismissed. Once a month the commission meets and, if it concludes there are sufficient grounds, orders an investigation, either by members of the commission or an office of advocates.<sup>14</sup> *Id.* art. 48(2). Individual members of the commission typically investigate complaints, meeting with the advocate and often with the complainant. The advocate under investigation may be required to provide documents or written explanations. *Id.* art. 48(3). The commissioner then prepares a report (*nota informativa*), including a recommended disciplinary measure, if warranted. When the investigation confirms that a violation occurred, the full commission considers the report. *Id.* art. 48(4). The advocate has the right to participate in the commission's consideration of the report, but the commission lacks authority to compel the advocate to appear. If the advocate participates, he or she does not have a right to be represented by counsel. *Id.* art. 48(7). The complainant often attends the commission's meeting. Based on the information before it, the commission decides whether discipline is justified or further investigation is necessary. *Id.* art. 48(6). However, if the commission decides that discipline is justified, it can impose only one of two sanctions, a warning or a reprimand, depending on "the gravity of the violation, circumstances in which it was committed, and the advocate's actions and behavior." *Id.* art. 49. The advocate can appeal imposition of one of these sanctions to a court of law. *Id.* art. 49(3).

In the case of a serious ethical violation, the commission may refer the matter to the Commission for Licensing Advocates, which has authority to decide whether the Ministry of Justice should withdraw an advocate's license. *Id.* arts. 41(2)(c), 22(2). The grounds for withdrawing a license are as follows:

- repeated failure to perform his or her duties for a year, if the advocate had been subject to disciplinary sanctions;
- systematic failure to provide ex officio representation when requested to do so by criminal investigation bodies or courts of law;
- commission of unlawful actions in obtaining the license;
- serious violation of the Code of Ethics;
- conviction of a crime; and
- loss of Moldovan citizenship.

*Id.* art. 22(1). The advocate may appeal a decision to withdraw his or her license to a court of law. *Id.* art. 22(3). When it receives evidence that an advocate committed a crime, the commission provides this evidence to the general prosecutor's office.

Through 26 March 2004, a total of 230 complaints were filed with the Bar, some directly with the president. According to the annual report of the chairman of the Commission for Ethics and Discipline, the commission examined 145 complaints in 2003, many of which it found to be groundless. Some advocates (their number was not specified) received warnings, four were reprimanded, and withdrawal of license was recommended for two. During 2003, the license of one advocate was withdrawn because he had concealed his criminal record when he applied to become an advocate—a situation, that is, involving his qualification to become an advocate, rather than a violation of the norms of professional responsibility while an advocate.

In addition to this formal procedure, an informal procedure has also developed. It was reported that when a complaint is addressed directly to the president of the Bar Council, he may call the

---

<sup>14</sup> Although neither the Law on the Legal Profession nor any regulations provide further details about the use of advocates' offices for investigation of complaints, that procedure might be useful for investigation of alleged misconduct in the *raions*.

advocate (and often the complainant) to his office and resolve the dispute himself. Sometimes, when a complaint is filed directly with the Bar, the secretary sends it to the president, rather than the commission. When this happens, it is not clear whether the president informs the commission how he resolved the complaint. One interviewee justified this informal procedure by stating that, as the president, he needs to know everything concerning the Bar and that if he wants to get involved, he does.

One interviewee described the Commission for Ethics and Discipline as “an ineffective, inefficient institution” and complained that the commission is reluctant to take action against advocates, because of professional solidarity. Another interviewee echoed this criticism. “I think members of the commission also commit violations,” she said, “and are reluctant to punish others.” Disciplinary proceedings suffer from a number of shortcomings. The commission depends on volunteers to investigate complaints and lacks subpoena power. It also lacks authority to impose meaningful sanctions. The existence of both formal and informal procedures provides no assurance that the commission itself addresses all complaints. Finally, lack of transparency in informal procedures could give rise to the appearance, if not the reality, that cronyism plays a role in how complaints are handled.

## IV. Legal Services

### Factor 18: Availability of Legal Services

***A sufficient number of qualified lawyers practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
There appear to be too few advocates, at least in some of the rural areas. Although the number of advocates is generally sufficient to meet the demands of clients who can afford to pay them, poverty limits access to legal consultations and civil representation for many people.	

#### Analysis/Background:

In addition to advocates, civil practice attorneys and other jurists provide legal consultations and representation. Unfortunately, there are no data on the number of civil practice attorneys or other jurists, either in total or by region. Quantitative conclusions on whether the number of such legal professionals is sufficient are therefore impossible. The Bar does not maintain information on the distribution of its members by region, but information is available on the number of advocates who have registered to represent disadvantaged criminal defendants through ex officio appointment in each territorial-administrative unit.<sup>15</sup> See Factor 19 for a discussion of ex officio appointments. Unfortunately, statistics are not available on the number of advocates who actually received ex officio appointments or the number of cases they handled. Nevertheless, the information on advocates who registered can provide at least an indication of the availability of legal services more generally. The following table shows the populations of the municipalities of Chisinau and Balti, the thirty-two *raions*, and the Gagauz Autonomous Territorial Unit; the number

<sup>15</sup> From information on the number of advocates in some rural administrative-territorial units obtained through interviews, it appears that a large proportion of advocates register for ex officio appointment. In Basarabeasca, 4 of 4 registered; in Cantemir, 6 of 6; in Causeni, 4 of 7; in Drochia, 8 of 8; in Edinet, 10 of 11; in Orhei, 14 of 15; and in Soroca, 12 of 14.

of advocates in each of those regions who registered for ex officio appointment; and the number of such advocates per 10,000 inhabitants.<sup>16</sup>

<b>Region</b>	<b>Population (1,000s)</b>	<b>Ex Officio Advocates Number</b>	<b>Per 10,000</b>
<b><i>Municipalities</i></b>			
Balti	149.0	43	2.89
Chisinau	779.9	160	2.05
<b><i>Raions</i></b>			
Anenii Noi	83.7	5	0.60
Basarabeasca	29.6	4	1.35
Briceni	77.9	4	0.51
Cahul	126.1	15	1.19
Cantemir	64.6	5	0.78
Calarasi	81.3	9	1.11
Causeni	93.3	4	0.43
Cimslia	64.9	3	0.46
Criuleni	72.8	6	0.82
Donduseni	47.4	4	0.84
Drochia	94.5	8	0.85
Dubasari	35.8	0	0.00
Edinet	86.1	10	1.16
Falesti	96.1	4	0.42
Floresti	93.6	5	0.53
Glodeni	64.2	5	0.78
Hincesti	126.7	4	0.32
Ialoveni	94.9	13	1.37
Leova	54.9	4	0.73
Nisporeni	68.4	3	0.44
Ocnita	55.6	5	0.90
Orhei	130.7	14	1.07
Rezina	53.9	2	0.37
Riscani	72.4	4	0.55
Singerei	96.2	5	0.52
Soroca	102.3	12	1.17
Straseni	91.7	3	0.33
Soldanesti	45.1	4	0.89
Stefan Voda	73.7	2	0.27
Taraclia	45.2	2	0.44
Telenesti	76.1	4	0.53
Ungheni	119.6	5	0.42
<b><i>Auton. Terr. Unit</i></b>			
Gagauzia	158.6	11	0.69
<b>TOTAL</b>	<b>3,606.8</b>	<b>391</b>	<b>1.08</b>

DEPARTMENT OF STATISTICS AND SOCIOLOGY OF THE REPUBLIC OF MOLDOVA, NUMBER OF THE POPULATION PRESENT IN THE RAIONS OF THE REPUBLIC OF MOLDOVA ON 1 JANUARY 2004 (31 March 2004); ORDER ON THE PUBLICATION OF THE LIST OF ADVOCATES WHO WILL PROVIDE EX OFFICIO LEGAL ASSISTANCE, Ministry of Justice Order No. 522 of 18.12.2003, M.O. 254-261/366 (2003).

Far more advocates per 10,000 registered to accept ex officio appointments in Chisinau (2.05) and Balti (2.89), the two largest cities, compared to the rest of Moldova. In one *raion*, Dubasari, no advocate registered. Other *raions* where few advocates registered for ex officio appointment

<sup>16</sup> Population estimates, which exclude Transnistria and the municipality of Bender, are as of 1 January 2004. Estimates must be used because the last official census in Moldova was conducted in 1989.

are Rezina (0.37), Straseni (0.33), Hincesti (0.32) and Stefan Voda (0.27). From this analysis, it is reasonable to conclude that appropriate legal services (including ex officio representation of indigent criminal defendants) are generally less available in rural areas than in Chisinau and Balti. However, in the future, more advocates may register to provide ex officio representation. After the state paid the arrears owed to ex officio advocates following the advocates' strikes in 2003, such representation has become more attractive. Indeed, one advocate reported that those who represent only ex officio clients can earn a stable income that sometimes exceeds that of advocates who do not perform such work.

A number of interviewees said that there were sufficient numbers of advocates, at least in Chisinau. Several qualified their answers, however, explaining that there were enough advocates given the number of clients who can afford to pay them. In other words, ability to pay is the constraint, rather than the number of advocates. In contrast to other regions, all interviewees in Gagauzia said that there was an insufficient number of advocates there. One consequence of the shortage of advocates in Gagauzia is that advocates limit their practice to criminal defense, but even so, criminal trials are often delayed because of advocates' heavy workloads.

## Factor 19: Legal Services for the Disadvantaged

***Lawyers participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty, have effective access to legal services.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
Thanks to the appointment of ex officio advocates, who are paid by the state, indigent criminal defendants have access to legal representation. However, because Moldova does not have a legal aid program, persons with limited means must seek legal consultation or representation in non-criminal matters from NGOs, legal clinics, individual advocates willing to provide free consultations, or civil practice attorneys.	

### Analysis/Background:

Except for the appointment of ex officio advocates for criminal defendants, the state has no program to make legal services available to those who cannot afford them. Although consideration has been given to establishing a legal aid program, lack of funding has thus far prevented the government from doing so. Presently, those who cannot afford an advocate can turn to four potential sources for legal services in non-criminal matters: public advocacy NGOs; legal clinics; individual advocates who are willing to provide occasional free consultations (but usually not representation in court); and civil practice attorneys.

Under the Constitution, criminal defendants are guaranteed "the right of defense." CONST. art. 26(1). Specifically, "[t]hroughout the trial parties have the right to be assisted by an advocate, either chosen or appointed ex officio [*din oficiu*]." *Id.* art. 26(3); *see also* CRIM. PRO. CODE arts. 17(3), 66(2)(5). The state therefore pays ex officio advocates to represent criminal defendants who cannot afford to retain an advocate themselves (or otherwise elect not to).<sup>17</sup> LAW ON THE LEGAL PROFESSION art. 54(3). Advocates are obliged to provide ex officio representation "at the request of criminal investigation bodies and courts of law." *Id.* art. 46(1). Indeed, systematic failure to provide ex officio representation at the request of criminal investigative bodies and courts of law is a ground for withdrawal of an advocate's license. *Id.* art. 22(1)(b). The Bar plays

<sup>17</sup> Ex officio advocates can also be appointed to represent persons who have limited capacity or are confined in psychiatric institutions. CIV. PRO. CODE arts. 77, 304, 316. However, this occurs infrequently.

an important role in administering this program. The offices of advocates who are willing to provide ex officio representation submit applications to the Bar Council, which then prepares lists of advocates for each territorial-administrative unit and sends them to the Ministry of Justice and the appropriate criminal investigation bodies and courts by 15 December of each year.<sup>18</sup> LAW ON THE LEGAL PROFESSION art. 6(1)-(4). The Bar Council also appoints one or more coordinating advocates for each territorial-administrative unit. *Id.* art. 6(4). When someone under investigation or charged with a crime has not retained an advocate, he or she may choose one from the Bar Council's list, but if he or she refuses to do so, the coordinating advocate will select one. *Id.* art. 6(5)-(6). If the advocate chosen is unable to provide legal representation, the coordinating advocate must ensure that another one is found, if need be from another territorial-administrative unit. *Id.* art. 6(7).

The Ministry of Justice, in consultation with the Ministry of Finance and the Bar Council, is responsible for determining the amount and manner of payment for ex officio representation. *Id.* 54(4). Payments must be transferred to the advocates' bank accounts within ten days after receipt of the criminal investigation body's order for payment or the court's decision. *Id.* art. 54(5). In the past, payments were rarely made in accordance with these requirements, but often years later. This was one of the grievances that led to the advocates' strikes in 2003. See Factor 20. Since then, the arrears have been retired and payments are now made currently. A regulation promulgated after the strike specifies procedures for payment that differ somewhat from those in the Law on the Legal Profession. See REGULATION ON THE AMOUNT AND MANNER OF REMUNERATING EX OFFICIO ADVOCATES FOR PROVIDING LEGAL ASSISTANCE AT THE REQUEST OF CRIMINAL INVESTIGATION BODIES AND FIRST INSTANCE COURTS, Ministry of Justice Regulation No. 139 of 31.03.2003, M.O. 97-98/137 (2003). Under this regulation, the criminal investigation body or first instance court will deliver a decision for payment to the coordinating advocate for the territorial-administrative unit after conclusion of the trial. *Id.* art 3. By the tenth day of the following month, the coordinating advocate submits these documents to the Bar Council, which then compiles a report for submission to the Ministry of Justice by the twentieth of the month. *Id.* arts. 3-4. Within ten days after receiving the report, the Ministry of Justice transfers funds to the Bar Council for the account of ex officio advocates.

The compensation for ex officio advocates depends on the services they perform and is specified in "conventional units," each of which equals MDL 20 (about \$1.80). Following are examples of the amounts paid to ex officio advocates:

4 conventional units for participating in each investigation procedure or hearing, up to a maximum of MDL 80 per day;

- 3 conventional units for studying the minutes of hearings; and
- up to 5 conventional units for drafting an appeal if the advocate represented the defendant at trial or up to 10 conventional units for drafting an appeal if the advocate did not represent the defendant at trial.

*Id.* art. 6(a)-(c). An advocate who represents two or more defendants in the same case is paid 150% the amount specified for one defendant. *Id.* art. 6(d). No payments are made for research or investigation.

The quality of ex officio legal representation is important because the number of people in Moldova who cannot afford to pay for an advocate is large. Anecdotal evidence suggests that the quality of such representation is often poor. Many of those interviewed expressed reservations about ex officio advocates, whose preparation is frequently said to be inadequate. In part this may be because they are not paid to prepare adequately and in part because until recently they had no expectation of being paid for their work any time soon. As one judge explained, "If you do

---

<sup>18</sup> See Factor 18 for a table listing the numbers of advocates who registered to provide ex officio representation.

something for free, you don't do it well." In a survey of 1,000 defendants held in preventative detention in four prisons throughout Moldova, almost 80% responded that the defense provided by ex officio advocates was inadequate. CRIMINAL JUSTICE & HUMAN RIGHTS 83. The reasons cited were lack of interest on the part of ex officio advocates in securing an acquittal (51.5%), low remuneration for their services (31.5%), and poor professional level of the advocates (17%). *Id.* at 83. A possible explanation for lack of zealous representation is that the advocates may not in fact be entirely independent, because 62.2% of the defendants reported that the criminal investigator assisted them in finding an ex officio advocate. *Id.* at 83-84. The Ministry of Justice and the Superior Council of Magistracy have accepted a proposal from Soros Foundation Moldova to study ex officio representation. The proposed methodology will involve reviewing case files in district courts and courts of appeal to compare cases with defendants represented by ex officio advocates with those in which defendants paid the advocates themselves. This study should provide useful information about the quality of ex officio representation.

Transnistria also has a system of court-appointed advocates in criminal cases. They are paid the equivalent of about \$4.00 per day, half what ex officio advocates west of the Nistru are paid. In addition, court-appointed advocates in Transnistria experience the same delays in payment that their counterparts west of the Nistru had experienced before the strikes.

A number of public advocacy NGOs provide legal services for the disadvantaged. Most are located in Chisinau and specialize in fields such as human rights (e.g., Lawyers for Human Rights, LADOM, Helsinki Committee for Human Rights, and, in Orhei, Pro-Democracy), environmental protection (Environmental Public Advocacy Center), and consumer protection (Center for Legal Protection of Consumers Rights). In addition, four legal clinics provide legal consultations and representation for persons of limited means. The clinics are affiliated with Balti State University, Comrat State University, Moldova State University in Chisinau, and Tiraspol State University. In addition to playing an important role in meeting the legal needs of the poor and socially vulnerable in their communities, they provide law students with practical experience. Finally, many advocates who were interviewed said they often gave free legal consultations to persons who could not afford to pay their honoraria. However, few are willing to provide free representation, because they believe they have already done more than enough work without payment. As one advocate explained, because they cannot engage in entrepreneurial activity, advocates must depend upon their law practice for their income. This suggests that the pro bono spirit cannot be expected to emerge in Moldova until more advocates earn an adequate living.

## Factor 20: Alternative Dispute Resolution

***Lawyers advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
Although some advocates recommend arbitration of commercial disputes to their clients, arbitration is still relatively uncommon. However, alternative dispute resolution is commonly used to resolve disputes over agricultural land following the privatization of collective farms.	

### Analysis/Background:

Legislation authorizing arbitration has existed for a decade. LAW OF THE REPUBLIC OF MOLDOVA ON THE ARBITRATION COURTS, Law No. 129-XIII of 31.05.1994, M.O. 2/12 (1994). It applies to all disputes "from obligatory contractual and non-contractual relations" between natural and juristic persons. *Id.*, pmb. The law authorizes a wide range of standing or ad hoc arbitration tribunals, with either general or specialized jurisdiction. *Id.* art. 1. Any natural person, without regard to

citizenship, may serve as an arbitrator, unless he or she is interested in the result of the arbitration or his or her independence or impartiality is otherwise in doubt. *Id.* art. 3(1). There is no code of ethics or other guidance for arbitrators or participants in an arbitration. Nor are there any restrictions on the kinds of legal professionals may represent parties in an arbitration, or indeed any requirement that parties be represented by legal professionals. No legislation on forms of alternative dispute resolution (ADR) other than arbitration has been adopted, although a law on mediation in criminal matters has been drafted.

There are standing arbitration courts within the Chamber of Commerce and Industry and the Union of Agricultural Producers. However, in general arbitration is not favored as a means of resolving disputes, with the result that there are perhaps ten commercial arbitrations in Moldova each year. Among the reasons given for the small number of commercial arbitrations are a lack of familiarity with arbitration among both advocates and clients, the belief of some advocates that litigation is more lucrative, and delays when the losing party challenges the arbitration award in court. Although many view ADR as more rapid and less expensive than litigation, one advocate said that in his experience arbitration took longer and cost more than litigation. However, several advocates said that they do recommend arbitration to their clients.

One of the most effective uses of ADR has been to resolve disputes involving land, following the privatization of collective farms. Approximately 80% of such disputes are settled by mediation. The Union of Agricultural Producers has fifteen offices with a total of sixty-seven mediators/arbitrators throughout the country to deal with land disputes. Cases are typically handled by a single mediator. Many people in rural areas reportedly welcome the use of mediation, because they cannot afford other means of resolving such disputes. About half the participants in that program are exempt from paying fees.

ADR is also possible in certain instances under the new Criminal Procedure Code. The prosecution of some minor crimes will be terminated if the injured party and defendant reach a reconciliation before a final judgment is entered. CRIM. PRO. CODE art. 276(5). The use of mediation to achieve reconciliation is specifically contemplated. *Id.* art. 276(7). It is too soon to know how often these provisions will be employed.

## V. Professional Associations

### Factor 21: Organizational Governance and Independence

***Professional associations of lawyers are self-governing, democratic, and independent from state authorities.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
The Bar is self-governing, reasonably democratic, and independent of the state.	

#### Analysis/Background:

The Bar is self-governing and reasonably democratic. All advocates are eligible to attend and vote at its Congresses, which are held at least annually. An extraordinary Congress can be convened by the Bar Council, the Commission for Ethics and Discipline, or the Audit Commission, or at the request of one-third of the advocates. LAW ON THE LEGAL PROFESSION art. 32(1). Among other things, the Congress has authority to elect and dismiss members of the Bar Council and the



Bar's two commissions, as well as six members of the Commission for Licensing Advocates; adopt and amend the Code of Ethics; approve the Bar's list of paid staff positions; approve the Bar's budget and the membership fees advocates pay; hear and approve annual reports on the activity of the Bar Council and Commission for Ethics and Discipline; and consider advocates' petitions on decisions of the Council, the Commission for Licensing Advocates, and the Commission for Ethics and Discipline. *Id.* art. 32(2). The president and two vice presidents of the Bar Council are elected by the Bar Council, not by a direct vote of the Congress. *Id.* art. 36(1), (5). There are no term limitations for members of the Bar Council or the commissions. However, the president of the Bar Council is limited to two consecutive four-year terms, and the presidents of both the Bar's commissions are limited to two consecutive two-year terms. *Id.* arts. 36(4), 40(4).

One interviewee suggested that the president's term is too long and that, for example, a single two-year term would be more democratic. Another noted the lack of turnover in the Bar's leadership generally and suggested the need to provide more opportunities for younger advocates to serve in leadership positions. Several interviewees complained that the president lacks sufficient time to devote to Bar activities, suggesting that a full-time executive director who did not practice law could be more effective. On the other hand, a number of interviewees are satisfied with existing arrangements and believe that the president does a good job representing the interests of advocates. Several interviewees complained about a lack of transparency, noting that sometimes they only learn about matters under consideration by the Bar Council after it has made a decision and that they do not receive notice of Congresses.

The Bar is independent of the state. Its activities are funded by membership fees paid by advocates and other payments "not prohibited by law." *Id.* art. 39(1). Advocates are obligated to pay membership fees on time. *Id.* art. 46(6)(b). However, in 2003, 40% of the advocates failed to pay membership fees in full. The fees are assessed at MDL 50 (about \$4.50) per month. Furthermore, the Law on the Legal Profession specifically provides that funds in the Bar's account are not public funds. *Id.* art. 39(2). Other than granting and withdrawing licenses of advocates and organizing the inaugural Congress, the government has no formal or informal role in management or decision-making processes of the Bar. See *id.* art. 59(4)-(5). However, some interviewees complained that the Ministry of Justice's licensing function diminished the Bar's independence. Others viewed the strikes of 2003 as evidence of the Bar's independence from the state. See Factor 22 on the strikes.

Although all advocates are required to be members of the Bar, they have the right to join other local, national, and international professional associations. *Id.* art. 30. One such voluntary professional association is the Union of Jurists, a more broadly based organization than the Bar, which was founded in October 2001 by 500 jurists. Its members now reportedly number in the thousands and include judges, prosecutors, advocates, notaries, government officials, law professors, and students. The goals of the Union of Jurists include not only protecting the professional interests of its members, but also promoting democracy, human rights, law reform, and the rule of law, as well as informing the public about its legal rights and responsibilities. STATUTE OF THE MOLDOVA UNION OF JURISTS, art. 6 (20 Oct. 2001) [hereinafter UNION OF JURISTS STATUTE].

## Factor 22: Member Services

***Professional associations of lawyers actively promote the interests and the independence of the profession, establish professional standards, and provide educational and other opportunities to their members.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>The Bar's limited financial resources prevent it from actively promoting the interests of its members. However, the two advocates' strikes in 2003 are generally regarded as having promoted the interests and independence of advocates. The Bar's promulgation of the Code of Ethics contributed to the establishment of professional standards, but it provides little in the way of educational opportunities for its members.</p>	

### Analysis/Background:

Several interviewees pointed out that the Bar's ability to provide services to its members is constrained by its limited financial resources. Some advocates said the Bar did a good job of providing services and representing the interests of advocates, given its financial limitations. However, almost as many advocates complained that all the Bar did was collect membership fees.

By and large, advocates viewed the two strikes of 2003 as an important contribution to the interests of advocates. On 7 May 2003, 563 advocates attended an extraordinary Congress, called in response to the Law on the 2003 State Social Insurance Budget, which required all advocates to make state social insurance contributions of MDL 711.66 (about \$65) each month, regardless of the amount of honoraria they received. LAW OF THE REPUBLIC OF MOLDOVA ON THE BUDGET FOR STATE SOCIAL INSURANCE, annex 4, h, Law No. 1519-XV of 06.12.2002 [hereinafter LAW ON THE 2003 STATE SOCIAL INSURANCE BUDGET], M.O. 190-197/1439 (2002). The Congress adopted a decision giving Parliament, the government, and the president ten days to amend the Law on the 2003 State Social Insurance Budget and to pay ex officio advocates the money owed them (more than MDL 1 million), or the advocates would strike. *Decision of the Extraordinary Congress of Advocates of the Republic of Moldova*, AVOCATUL POPORULUI, No. 5, at 3 (2003). On 19 May, most advocates went on strike and refused to attend court proceedings, causing delays in scheduled hearings. The state's response was swift. A law that had been passed on 15 May was approved by Moldova President Vladimir Voronin on 19 May, reducing advocates' state social insurance contributions. The amount payable depended on whether an advocate received total honoraria in a month of more or less than MDL 2,454 (about \$223), which is three times the estimated average salary for 2003 (MDL 818). Advocates receiving more than that amount make a fixed contribution equal to 29% of three times the estimated average salary for 2003, and advocates receiving not more than that amount pay 10% of the honoraria received, but not less than MDL 54 (about \$5). LAW OF THE REPUBLIC OF MOLDOVA ON MODIFYING AND COMPLETING ANNEX NO. 4 OF THE LAW ON THE STATE SOCIAL INSURANCE BUDGET FOR THE YEAR 2003, Law No. 204-XV of 15.05.2003, M.O. 87-90/410 (2003). The Bar Council met with the minister of justice on 20 May and, given the amendment of the Law on the 2003 State Social Insurance Budget and actions taken to begin paying arrears to ex officio advocates, the Bar Council decided to suspend the strike.

As it turned out, the amendment to the Law on the 2003 State Social Insurance Budget was not retroactive to 1 January 2003, but was effective only as of 23 May 2003, leaving advocates liable for MDL 3,351.80 as the contribution for the period prior to that date—a larger sum than many could afford. Furthermore, the government began to collect those contributions by sequestering advocates' bank accounts and other actions. Because the concerns of the strike had been only partly addressed, a second extraordinary Congress was convened on 31 October 2003. It

adopted a decision calling on Parliament, the government, and the president to meet the advocates' demands in full or face a general strike of advocates on 17 November. Those demands included making the amendment to the Law on the 2003 State Social Insurance Budget effective as of 1 January 2003; ceasing enforcement actions for contributions prior to amendment; modification of annex 8 of the Law on the State Budget for 2003 to reduce by approximately three-quarters office rents paid by advocates; and directing law enforcement bodies to provide facilities where advocates could meet with clients without time limits, without glass barriers, and without unnecessary formalities. *Decision of the Second Extraordinary Congress of Advocates of the Republic of Moldova*, AVOCATUL POPORULUI, Nos. 11-12, at 7 (2003). The strike began on 17 November and lasted a week. Another amendment to the Law on the 2003 State Social Insurance Budget was passed to make the reduction in contributions retroactive to 1 January. LAW ON MODIFYING AND COMPLETING THE LAW OF THE REPUBLIC OF MOLDOVA ON MODIFYING AND COMPLETING ANNEX NO. 4 OF THE LAW ON THE STATE SOCIAL INSURANCE BUDGET FOR THE YEAR 2003, NO. 1519-XV OF DECEMBER 6, 2002, Law No. 465-XV of 21.11.2003, M.O. 235-238/949 (2003). The minister of internal affairs issued a regulation to address the concerns of advocates about meeting with clients in detention. Minister of Internal Affairs Order No. 30/338 of 10.11.2003, AVOCATUL POPORULUI, Nos. 11-12, at 32 (2003). However, no action was taken on the issue of office rents.

Not everyone viewed the strikes favorably. The day after the first strike began, the minister of justice wrote to the president of the Bar Council, pointing out that the amendment to the Law on the 2003 State Social Insurance Budget had already been passed on 15 May. The minister of finance had already transferred funds for the payment of ex officio advocates in April, and a case challenging the constitutionality of the provisions on the Law on the 2003 State Social Insurance Budget was pending in the Constitutional Court. AVOCATUL POPORULUI, No. 5, at 7 (2003). As a result, he argued, the situation "did not constitute a collective labor conflict nor the object of a strike." *Id.* In short, he viewed the strike as unnecessary. Another question was whether the strike violated article 46(1)(a) of the Law on the Legal Profession, which obligates an advocate to "[p]rovide legal assistance under the contract signed with the client or court-appointed type of legal assistances at the request of criminal investigation bodies and courts of law." See also CODE OF ETHICS art. 6 (advocate shall place the client's interests above his or her own).

The Bar helped to establish professional standards for advocates by adopting the Code of Ethics in December 2002. See Factor 16. In addition, its Commission for Ethics and Discipline investigates complaints of misconduct by advocates, although its ability to punish misconduct is limited to issuing warnings or reprimands. See Factor 17.

The Bar has made only modest efforts to provide educational opportunities for its members. Its predecessor, the Collegium of Advocates, established the Law Center of Advocates, which offers continuing legal education for advocates. See Factor 14. Although the Law Center is affiliated with the Bar, almost all its funds come from international donors, not the Bar. Furthermore, the Bar agreed to pay for publication of the magazine *Avocatul Poporului*, subject to the condition that if another sponsor is found for one or more issues, the Bar's obligation would be reduced accordingly. Because the Bar does not pay for distribution of *Avocatul Poporului*, advocates must come to the Law Center to pick up their copies. As a result, many of the 1,000 copies of each issue reportedly remain unclaimed. While some praised *Avocatul Poporului*, others characterized its content as unremarkable.

In addition, the Bar has established a fund of MDL 12,870 (about \$1,170) to provide "material support" to advocates in emergencies, such as illness.

## Factor 23: Public Interest and Awareness Programs

***Professional associations of lawyers support programs that educate and inform the public about its duties and rights under the law, as well as the lawyer's role in assisting the public in defending such rights.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
Although individual advocates work in programs to educate the public about its rights and duties, the organized bar does not. Several small professional associations have made efforts to advise the public about its legal rights and responsibilities.	

### Analysis/Background:

One advocate referred to the Bar's inaction in this regard as "a weak point, a very weak point," noting that increasing public awareness about legal rights and responsibilities is something advocates do individually. Much of this work is also done through advocacy centers, other NGOs, and law clinics, none of which are affiliated with, or receive support from, the Bar.

One of the objectives of the Union of Jurists is to familiarize people with Moldovan and international law. UNION OF JURISTS STATUTE art. 6(h). This is one of the activities to be undertaken by of its Department of Propagation of Judicial Knowledge. UNION OF JURISTS, REGULATION OF THE DEPARTMENT OF PROPAGATION OF JUDICIAL KNOWLEDGE art. 5.

The Union of Free Profession Advocates is a small voluntary professional association that uses the mass media to inform the public about consumer protection rights. In addition, the Association of Women with a Legal Career works to raise the awareness of society and government to the problems women face. Among other things, it has distributed leaflets on issues involving families and children, as well as informing children about human trafficking.

## Factor 24: Role in Law Reform

***Professional associations of lawyers are actively involved in the country's law reform process.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
Individual advocates occasionally participate in law reform efforts, but the organized Bar has had very little involvement. This appears to be due partly to Parliament's disinclination to consult specialists, including advocates, and partly to a lack of interest in such activities by the Bar.	

### Analysis/Background:

Although individual advocates occasionally provide comments on proposed legislation or participate in Parliamentary working groups, the organized Bar as such is not very involved in law reform. In large part, this appears to be due to Parliament's reluctance to consult advocates whose specialized knowledge could contribute to drafting more effective legislation. For example, one interviewee noted that the involvement of advocates in drafting the new codes was modest. Another pointed out that advocates often have no access to the text of draft laws, making it difficult for them to submit comments to Parliament. From the experience of interviewees, it appears that advocates are more likely to be consulted when proposed legislation directly affects

their profession. On the other hand, several interviewees said they did not think advocates as a whole were particularly interested in law reform projects. Furthermore, the Bar has no body that could participate in the law reform process if it were invited to do so.

An objective of the Union of Jurists is to participate in drafting of legislation. UNION OF JURISTS STATUTE art. 6(d). In April 2002 it organized a conference on the draft Civil Code, in collaboration with Moldova State University and the project "The Reforms of Economic Legislation."